

United States  
Court of Appeals  
for the Ninth Circuit.

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of MYRON SELZNICK, Deceased, BANK  
AMERICA NATIONAL TRUST and SAV-  
INGS ASSOCIATION, DAVID O. SELZ-  
NICK and CHARLES H. SACHS, Executors,  
Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

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Transcript of Record

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Application to Review a Decision of the Tax Court  
of the United States.



United States  
Court of Appeals

for the Ninth Circuit.

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of MYRON SELZNICK, Deceased, BANK  
AMERICA NATIONAL TRUST and SAV-  
INGS ASSOCIATION, DAVID O. SELZ-  
NICK and CHARLES H. SACHS, Executors,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

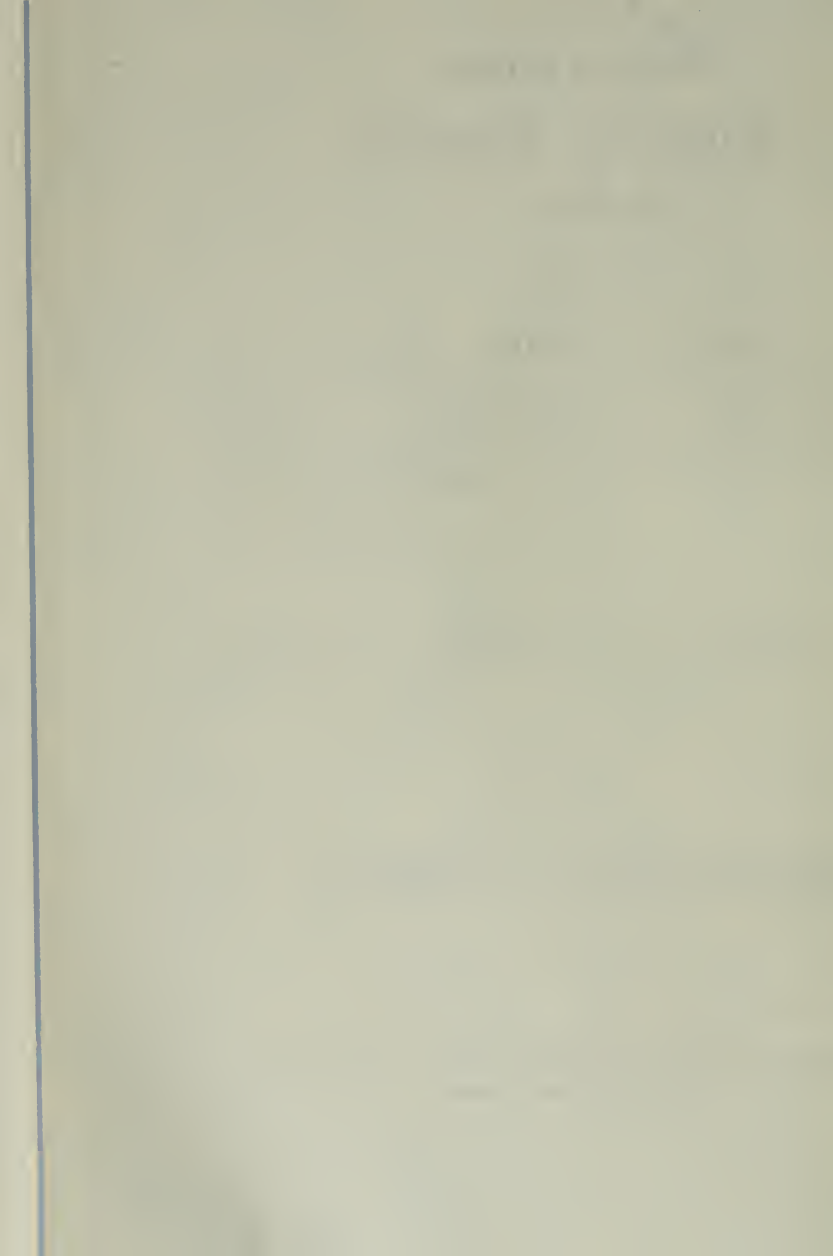
Respondent.

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Transcript of Record

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Application to Review a Decision of the Tax Court  
of the United States.



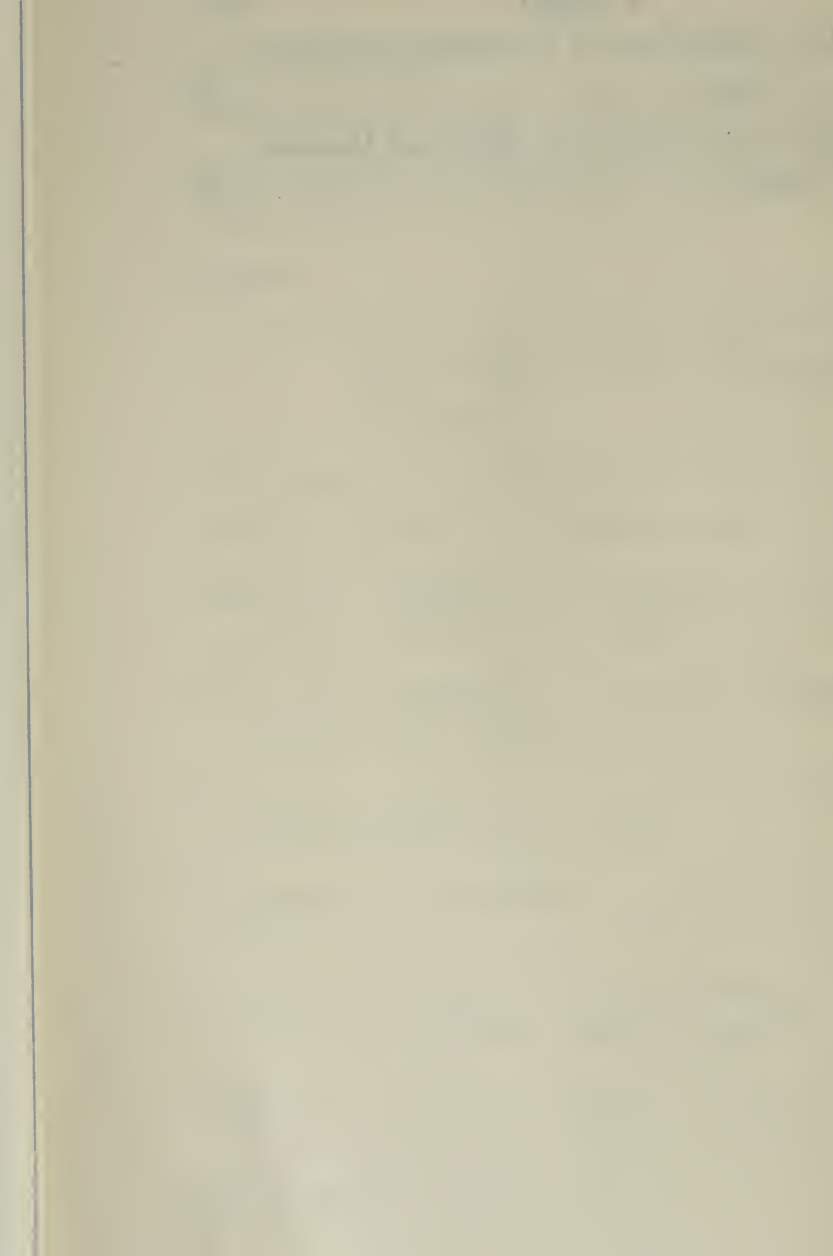
NOTE: When deemed likely to be of an important nature, doubtful matters appearing in the original certified record literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein. When possible, an omission from the text is indicated by *italic* the two words between which the omission seems

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itioner:

EPH D. BRADY, ESQ.,  
L. NOSSMAN, ESQ.,  
CIEN W. SHAW, ESQ.

pondent:

A. TONJES, ESQ.

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Docket No. 14985

E OF MYRON SELZNICK, Deceased,  
NK OF AMERICA NATIONAL TRUST  
D SAVINGS ASSOCIATION, DAVID O.  
ZNICK and CHARLES H. SACHS, Ex-  
ors,

Petitioners,

vs.

SSIONER OF INTERNAL REVENUE,  
Respondent.

## DOCKET ENTRIES

- Petition received and filed. Taxpayer notified. Fee paid.
- Copy of petition served on General Counsel.
- Request for Circuit hearing in Los An-

1947

Aug. 20—Copy of answer served on taxpayer.  
Angeles Calendar.

1948

Sept. 23—Hearing set November 29, 1948  
Angeles, California.

Nov. 29—Hearing had before Judge Van Fossan  
on merits. Stipulation of facts with exhibits  
1-A thru 11-K attached to taxpayer's brief due  
1/13/49. Response to brief 2/14/49. Petitioner's reply  
brief 2/14/49.

Dec. 21—Transcript of hearing 11/29/48 filed.

1949

Jan. 11—Brief filed by taxpayer. Copy served.

Feb. 1—Motion for extension to 3/12/49 to  
file brief, filed by General Counsel.  
Granted to 3/12/49.

Apr. 1—Memorandum Opinion rendered by  
Judge Van Fossan. Decision will be made  
under Rule 50. Copy served.

Apr. 13—Motion to withdraw the memorandum  
opinion and to permit filing of taxpayer's  
supplementary brief, brief filed by taxpayer.  
4/14/49 Denied.

Apr. 25—Motion for review by the Court of  
the decision of a division filed by taxpayer.  
Denied.

May 3—Computation for entry of decision  
made by General Counsel.

May 4—Hearing set 6/1/49 on settlement.

-Decision entered. Judge Van Fossan.  
Div. 9.  
-Order and decision entered. Judge Arundell. Div. 7.  
-Petition for review by U. S. Court of Appeals, 9th Circuit with assignments of error filed by taxpayer.  
-Proof of service filed.  
-Designation of record filed by taxpayer. Service acknowledged thereon.  
-Certified copy of order from 9th Circuit for transmission of original exhibits 2-B, 3-C, 4-D, 5-E, 6-F, 7-G, 8-H, 9-I and 10-J filed.

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the Tax Court of the United States

Docket No. 14985

E OF MYRON SELZNICK, Deceased,  
K OF AMERICA NATIONAL TRUST  
O SAVINGS ASSOCIATION, DAVID O.  
ZNICK and CHARLES H. SACHS,  
utors,

Petitioners,

vs.

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Respondent.

petitions for a redetermination of the assessment deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (LA:FR-100 NAB) dated March 27, 1947, and as a basis for the proceeding alleges:

1. Bank of America National Trust and Savings Association, a national banking association organized under the laws of the State of California, O. Selznick and Charles H. Sachs are the co-executors appointed and acting executors of the last will and testament of Myron Selznick, who died on March 23, 1944. The Federal estate tax return for the estate of said decedent was duly filed with the District Collector of Internal Revenue for the 6th District of California on June 22, 1945 and the amount of \$294,099.92 was paid to said Collector on said date as Federal estate tax of said estate.

2. The notice of deficiency (a true and correct copy of which with accompanying statement is attached hereto and is marked Exhibit A) was issued by respondent on March 27, 1947.

3. The taxes in controversy are estate taxes in the amount of \$409,634.05—the asserted deficiency of \$384,634.05 plus the amount of an overpayment hereby claimed of not less than \$25,000.

4. The determination of deficiency in the amount set forth in the said notice of deficiency is based on the following errors:

- (1) Respondent erred in determining the value of 100 shares owned by decedent of the stock of Myron Selznick, Ltd., a New York corporation,

ent and in failing to determine that the  
said stock was not in excess of \$12,592.50  
ate.

espondent erred in determining that the  
1000 shares owned by the decedent of  
ock of United Studios, Inc., a Delaware  
on, was \$12,000 on the date of decedent's  
in failing to determine that the value of  
was not in excess of \$6,000 on said date.  
espondent erred in determining that the  
ommissions payable by clients, whom de-  
resented as agent, was \$271,590.21 and in  
determine that the value of said commis-  
able was not in excess of \$79,390.42.

espondent erred in determining that the  
he claim of decedent for commissions re-  
nder a contract between Myron Selznick  
n Selznick, Inc., parties of the first part  
ad Hayward, Leland Hayward, Inc., Le-  
ward and Co., Ltd., Leeward Royalties,  
Deverich and Hayward-Deverich, parties  
ond part, was \$9,594.77 on the date of de-  
eath and in failing to determine that the  
said claim was not in excess of \$2,186.67.  
espondent erred in determining that the  
the claim of decedent for commissions  
agency contract with Hunt Stromberg  
000 on the date of decedent's death and  
to determine that said claim had no value  
ate.

should be included in the gross estate (as a item 64 on Schedule F, Other Miscellaneous Property) a settlement with Marguerite Robe claim of decedent against said individual missions, in determining that the value claim was \$6,500 on the date of decedent and in failing to determine that said claim value on said date.

(7) Respondent erred in determining that should be included in the gross estate (additional item 65 on Schedule F, Other Miscellaneous Property) a claim of decedent against Donat for monies advanced, in determining the value of said claim was \$21,866.36, on the date of decedent's death, and in failing to determine that said claim had no value on said date.

(8) Respondent erred in determining that should be included in the gross estate of decedent transfers of property made during decedent's life to a trust made by decedent on January 29, 1932, in the amount of \$152,951.83, and in failing to determine that no amount should be included in the gross estate of decedent on account of transfers of property to said trust in excess of the amount of \$130,817.79, which was reported as item 1 on Schedule G of Form 706 filed by said estate.

(9) Respondent erred in including in the gross estate of decedent the value of life insurance policies transferred by decedent to the trust created by him on January 29, 1932, and mentioned

in said gross estate on account of said policies in excess of the amount of \$39,- which was reported as item 2 in Schedule n 706 filed by said estate.

Respondent erred in failing to allow as on a claim of Florence A. Selznick against in the amount of \$14,535.01.

Respondent erred in failing to allow as a a claim of Mildred Selznick against the the amount of \$27,575.00.

Respondent erred in failing to allow de- f certain Federal and state income taxes property taxes, and interest thereon, ac- cor to the date of decedent's death.

Respondent erred in failing to allow de- f certain administration expenses includ- missions of the executors, extraordinary es, expenses of preparation of the Federal ax Return and reasonable fees of tax coun- a) the preparation of the petition herein; roceedings within the Bureau of Internal prior to trial; (c) for the trial and brief- ese proceedings before the Tax Court of ed States and (d) for the representation state in any appellate court proceedings y eventuate.

Respondent erred in failing to allow a or the amount of estate, inheritance, succession taxes actually paid or payable



of property of the decedent included in estate.

(15) Respondent erred in determining there is any deficiency and in failing to determine an overpayment.

5. The facts upon which the estate relies as basis of this proceeding are as follows:

(1) With respect to the assignment set forth in paragraph 4 (1) the facts are:

(a) On the date of his death, decedent Myron Selznick, owned 100 shares of the capital stock of Myron Selznick, Ltd., a New York corporation engaged in the business of acting as agent for artists and directors.

(b) The capital stock of Myron Selznick, Ltd. was never at any time listed on any stock exchange and was never at any time traded in the market or otherwise sold or exchanged. The 100 shares of stock of said corporation owned by decedent represented all the outstanding shares of said corporation.

(c) The value of said shares on the date of decedent's death was not in excess of \$125.00 per share or a total value for the 100 shares of \$12,500. Said shares were valued at said value in item 22, Schedule B of Form 706 filed with the estate.

(d) In his final determination of the deficiency, respondent valued said shares at \$39,958.34.



On the date of his death, decedent owned shares of the capital stock of United Studios, a Delaware corporation, engaged in the business of holding real property and collecting rents thereon.

The capital stock of United Studios, Inc., was never at any time listed on any stock exchange and was never at any time traded in over the counter or otherwise regularly sold or exchanged. The value of said shares of United Studios, at the date of decedent's death was not in excess of \$6 per share or \$6,000 for the 1,000 shares owned by the decedent. Said shares were valued at that amount in item 25 of Schedule B of Form 706 filed by the estate.

In his final determination of the asserted value, respondent valued said shares of stock at \$6,000.

With respect to the assignment of error set forth in sub-paragraph 4 (3) the facts are:

Prior to his death, decedent had for many years acted as agent for actors, actresses, producers, directors and others engaged in the motion picture industry and in the entertainment industry generally, by obtaining for them employment, negotiating their relations with their employers and otherwise assisting them in their professional activities.

In this capacity, decedent had entered into numerous contracts with a large number of such individuals, by the terms of which he was entitled to

by a percentage of the compensation of such individuals.

(b) On the date of the death of the decedent there were unpaid amounts totalling \$79,330 accrued and payable to decedent as commissions for services theretofore rendered by decedent under such agency contracts then in effect.

(c) As of the date of decedent's death, the collection under said agency contracts of any amounts in addition to the amounts accrued and payable on said date was wholly contingent and uncertain, and it was not possible to determine on said date whether further amounts, if any, might be collected under said contracts. As of said date said agency contracts did not represent an asset of the estate (to the extent, if in excess of the amounts accrued and payable on said date) which could have been sold.

(d) On the date of decedent's death, the total value of claims of decedent under such agency contracts was not in excess of the sum of \$79,330 representing the amounts accrued on said date for commissions previously earned. Said value on the date of said commissions was reported in item 54 of Schedule F of Form 706 filed by the estate.

(e) In his final determination of the estate tax deficiency, respondent valued said claims of decedent under agency contracts at \$271,590.

(4) With respect to the assignment of the proceeds set forth in sub-paragraph 4 (4) the facts are

(a) On September 30, 1940 decedent

Hayward, Inc., a New York corporation,  
Hayward and Co., Ltd., a California cor-  
poration, Leeward Royalties, Inc., a California cor-  
poration, Nat Deverich and Hayward-Deverich, a  
California corporation, were parties of the second

Under said contract, decedent transferred  
parties of the second part certain agency  
and received in exchange therefor a right  
of the commissions derived by the  
of the second part therefrom, payable if, as  
such commissions were received by the  
of the second part.

As of the date of decedent's death, there  
was accrued and payable to decedent under said  
contract the sum of \$2,186.67.

As of the date of decedent's death, the col-  
lection under said contract of any amounts in addi-  
tion to the sum accrued and payable on said date  
was wholly contingent and uncertain and it was not  
possible to determine on said date what further  
amount, if any, might be collected thereunder.

The value of the claim of decedent under  
said contract on the date of decedent's death was  
\$2,186.67, which amount was reported in item 55  
of Schedule F of Form 706 filed by the estate.

In his final determination of the asserted  
claim, respondent valued said claim of decedent  
under said contract at \$9,594.77.

With respect to the assignment of error set

employed by Hunt Stromberg, a motion picture director, to advise and assist in the organization and operation of an independent motion picture production enterprise, being organized by Hunt Stromberg.

(b) In 1942, said employment was reduced to writing in an agency contract whereby Hunt Stromberg was employed by Hunt Stromberg as agent to receive as commission 10% of the stock of the corporation formed to carry on said enterprise, 10% of Stromberg's compensation from said enterprise, only if, as and when such compensation should be received by Stromberg from said enterprise for his personal use.

(c) As of the date of decedent's death, no dispute had arisen between Stromberg and decedent as to said agency contract and Stromberg was asserting that decedent was entitled to the amounts thereunder. Furthermore, after decedent's death, Stromberg asserted that said death terminated said agency contract and all of his obligations thereunder.

(d) As of the date of decedent's death, the collection of any amounts under said contract by Stromberg was wholly contingent and uncertain, and the claim of decedent thereunder had not matured.

(e) In his final determination of the deficiency, respondent valued decedent's claim against Hunt Stromberg at \$200,000.

(6) With respect to the assignment of

an agency contract with Marguerite Rob-  
by he represented said individual as  
prior to said date, decedent had determined  
as not receiving the amounts due to him  
and agency contract and had brought an  
action against Marguerite Roberts in the Superior  
Court of the State of California in and for the  
County of Los Angeles for damages for breach of  
contract.

Said action was pending on the date of de-  
cedent's death and was then and had theretofore  
admitted by the defendant, Marguerite Rob-  
erts, to recovery therein had been obtained.

After decedent's death, the executors of the  
estate asserted the claim against Marguerite Roberts  
in the amount of \$6,500 paid to the estate in settle-  
ment of said claim.

At the date of decedent's death, the col-  
lection of any amounts from Marguerite Roberts  
was contingent and uncertain and said claim  
against Marguerite Roberts had no value.

In his final determination of the asserted  
claim, the respondent valued decedent's claim  
against Marguerite Roberts at \$6,500.

With respect to the assignment of error set  
forth in sub-paragraph 4 (7) the facts are:

In the year 1940, Robert Donat, a British  
theatre actor, was a client of Myron Selz-  
don Ltd., an agency controlled by the

(b) During the summer of 1940, decedent asked to advance to Robert Donat funds for support, in the United States, of Mrs. Donat and her children, because they had no funds in the United States. Decedent agreed thus to advance funds because he desired to retain the services of Robert Donat as a client of his London office and because he believed that Donat might come to the United States in which event he would employ decedent as agent in the United States.

(c) During the period between August 1940 and the summer of 1943, decedent advanced to Robert Donat sums totalling \$21,886.36.

(d) During the period between August 1940 and the summer of 1943, decedent had received no repayment in any form of the amounts advanced to Mrs. Donat, and inquired as to when he might expect to be reimbursed for the sums advanced. Decedent received no satisfactory answer from Robert Donat and, thereupon, ceased making further payments.

(e) Between 1940 and the present time, Robert Donat has never been in the United States and neither he nor his wife have any property in the United States. As of the date of decedent's death, no amount had been collected on account of the sums advanced to Mrs. Donat, and no acknowledgment of the obligation therefor had been obtained from Mr. or Mrs. Donat.

(f) The executors of decedent's estate

the obligation. The executors have been  
that it would be illegal for Robert Donat  
an indebtedness outside of England ex-  
e amount of funds which he could have  
emitted outside of England.

of the date of decedent's death, said  
not enforceable and not collectible and  
ue.

his final determination of the asserted  
respondent valued decedent's claim  
Robert Donat at \$21,886.36.

with respect to the assignment of error  
in sub-paragraph 4 (8) the facts are:

January 29, 1932, decedent made a dec-  
f trust as trustor and named therein  
National Trust and Savings Bank of Los  
national banking association, as trustee  
trust was designated as Citizens' National  
Savings Bank Trust #6969.

rior to June 6, 1932, decedent made trans-  
property to said trust, which property as of  
f decedent's death had a value of \$152,-

the terms of said trust, decedent re-  
right to receive in monthly payments  
of the property transferred to said trust  
led that none of the income of said prop-  
ne period between the last such monthly  
and the date of decedent's death was to  
ed by decedent or by his estate.



(d) Said transfers made to said trust June 6, 1932, were not transfers intended to take effect in possession or enjoyment at death and were not transfers under which decedent retained for his life or any period not ending before his death the possession or enjoyment of the income from, said property.

(e) After June 6, 1932, decedent made transfers of property to said trust which had a value as of the date of decedent's death of \$130,817.79, which amount is conceded to be includible in the estate (and of which all was reported as includible in the estate on Schedule G of Form 706 filed by the decedent).

(f) None of the transfers of property to said trust in excess of the amount of \$130,817.79 referred to in sub-paragraph (e) above are includible in the gross estate of decedent.

(g) In his final determination of the deficiency, respondent included in the gross estate of decedent the property having a value as of the date of decedent's death of \$152,951.83 and \$130,817.79 referred to in sub-paragraphs (b) and (c) above, respectively.

(9) With respect to the assignment of income set forth in sub-paragraph 4 (9) the facts are:

(a) On January 29, 1932, decedent made a declaration of trust as trustor (as heretofore stated in paragraph 5 (8) (a)), naming Citicorporation Trust and Savings Bank of Los Angeles as



on or about January 29, 1932, decedent transferred by assignment to said trust certain insurance policies on his life. Said policies are listed on Schedule G of Form 706 filed by the estate.

After the transfer of said policies to the trust, the amounts receivable thereunder as interest were receivable by said trustee and this continued at all times after said transfers and until decedent's death was made to the trustee under said policies until decedent's death.

Said transfers of insurance policies made prior to June 6, 1932, were not transferred to take effect in possession or enjoyment after decedent's death and were not transfers in which decedent retained for his life or any period ending before his death the possession or enjoyment of, or the income from said property.

At no time after January 10, 1941, did decedent possess any incident of ownership in the proceeds of the policies thus transferred to said trust.

The total amount received by said trustee from the proceeds under said policies was \$188,275.31 of which the proportion equivalent to the proportion of total premiums for such insurance paid on or before January 10, 1941, was \$148,805.10 and the proportion equivalent to the proportion of total premiums for such insurance paid after January 10, 1941, was \$39,470.21.

The said amount received by said trustee as

(h) None of the amount received by said decedent as insurance under said policies, in excess of the amount of \$39,470.21 referred to in sub-paragraph (f) above, is includible in the gross estate of said decedent.

(i) In his final determination of the deficiency, respondent included in the gross estate of decedent said amount of \$39,470.21 referred to in sub-paragraphs (f) and (h) above and in addition included therein the additional amount of \$148,805.10 referred to in sub-paragraph (g) on account of said insurance.

(10) With respect to the assignment of the estate set forth in sub-paragraph 4 (10) the facts are as follows:

(a) Florence A. Selznick was the mother of decedent and of his brother, David O. Selznick, commencing prior to 1936 and at all times thereafter. Florence A. Selznick was without funds and was unable to provide support for herself.

(b) Prior to 1936 decedent and David O. Selznick agreed to provide for the support of Florence A. Selznick by paying for said purpose \$100.00 weekly. Said agreement was made in view of the respective obligations to support Florence A. Selznick as provided in California Civil Code Section 206.

(c) Commencing in 1936, the weekly payments made by decedent for the support of Florence A. Selznick were made by the segregation of the funds of decedent by means of accounting with

id funds were at all times held for the Florence A. Selznick and decedent had no right, title or interest therein. From me, amounts were withdrawn from said ly by or for the benefit of Florence A.

the date of decedent's death, there re- said funds the sum of \$14,535.01 which et been expended by or on behalf of Flor- elznick.

a said date, the segregation of said funds nt represented a transaction completed ne date of death of decedent whereby the Florence A. Selznick therein became fully d said segregation did not constitute an contract.

e agreement of decedent to transfer funds ce A. Selznick by means of segregating bona fide and was in consideration of his to support Florence A. Selznick and of ment of David O. Selznick to discharge his of support by providing similar sums for rt of Florence A. Selznick which agree- esented adequate and full consideration or money's worth.

rence A. Selznick filed a claim against for the amount transferred to her by de- 4,535.01, which claim was on June 6, 1944, nd approved by the Superior Court of f Calif in in and for the Court of

estate, and the amount of said claim was  
Florence A. Selznick by the estate on June

(h) The claim of Florence A. Selznick  
said estate for \$14,535.01 was properly all  
a deduction from the value of the gross e  
reported in item 4 of Schedule K of Form  
by said estate).

(i) In his final determination of the  
deficiency, respondent did not allow said  
Florence A. Selznick as a deduction from  
of the gross estate.

(11) With respect to the assignment  
set forth in sub-paragraph 4 (11) the fac

(a) In February, 1943, Mildred Selznick  
and for many years had been the wife of  
Selznick, a brother of decedent and David  
nick. In said month, Mildred Selznick co  
an action against decedent and David O.  
in the Superior Court of the State of C  
in and for the County of Los Angeles.

(b) In said action, Mildred Selznick  
two claims against decedent and David O.  
as follows:

(i) A claim for damages for breach of  
which she alleged to have been made wi  
decedent and David O. Selznick by the  
which she alleged that she had surren  
right to obtain a divorce from Howard  
and had rendered services in caring for h  
change for the alleged agreement of dec

h living accommodations for herself for  
her natural life and for her children  
reached their majority, and in addition  
least \$75 per week and provide financial  
her so long as she should live.

aim in tort for alleged deceit on the part  
and David O. Selznick in inducing her  
her claims and rights against Howard  
men decedent and David O. Selznick had  
n of carrying out the contract alleged  
n made with her.

action in the Superior Court was re-  
ecedent and was pending at the date of  
Thereafter it was vigorously resisted  
te. Ultimately, prior to a trial of said  
in March, 1945, the executors of dece-  
re and David O. Selznick agreed with  
lznick upon a compromise settlement of  
e claims in said action in the Superior  
ne payment to her of money and prop-  
at \$55,150.00 of which the estate's share  
.00

l compromise settlement was submitted  
erior Court of the State of California  
the County of Los Angeles in a special  
in the probate of decedent's estate. In  
proceedings, on May 1, 1945, the Su-  
rt approved the compromise settlement  
d and approved the claim of Mildred

(e) The claims of Mildred Selznick to the estate of the decedent were (i) as to the claim based upon the contract, contracted bona fide and for an adequate and full consideration in money or money's worth, and, (ii) as to the claim in tort for alleged negligence, represented an alleged liability imposed by the State of California and arising out of the death of decedent. The amount paid in settlement of the claims represented an allowable deduction from the value of the gross estate (as reported on the return of Schedule K of Form 706 filed by the estate).

(f) In his final determination of the assignment of error, respondent did not allow said claims of Mildred Selznick as a deduction from the value of the gross estate.

(12) With respect to the assignment of error set forth in sub-paragraph 4 (12) the facts are:

Prior to the final determination of Federal income tax liability, decedent's estate will have paid for items of the character described in the assignment of error in paragraph 4 (12) of this petition. These items are properly deductible in the final determination of the net estate.

(13) With respect to the assignment of error set forth in sub-paragraph 4 (13) the facts are:

Prior to the final determination of Federal income tax liability, decedent's estate will have paid for further liability for items of the character described in the assignment of error in paragraph 4 (13) of this petition.



th respect to the assignment of error set  
b-paragraph 4 (14) the facts are:

the final determination of Federal estate  
y of decedent's estate certain items of  
e character described in the assignment  
paragraph 4 (14) of this petition will  
paid or be payable. Decedent's estate  
tled to an appropriate credit therefor.

rron Selznick, hereinbefore referred to  
edent, was born on October 5, 1898, in  
Pennsylvania and died a resident of  
lls, California, on March 23, 1944. His  
ing administered under the laws of the  
alifornia.

re, petitioner prays that this Court de-  
t there is no deficiency in estate tax;  
contrary there has heretofore occurred  
ment of Federal estate tax; that the  
emine as a part of its decision that the  
payment was paid within three years be-  
ailing of the deficiency notice, or in the  
any further payment should be made,  
urther payment was made after the mail-  
notice of deficiency; and grant such other  
r relief as may be equitable in the

/s/ JOSEPH D. BRADY,  
/s/ WALTER L. NOSSAMAN,  
/s/ LUCIEN W. SHAW,

State of California,

County of Los Angeles—ss.

H. M. Bardt, being first duly sworn, sa  
is Vice President and Trust Officer of  
America National Trust and Savings Ass  
national banking association, which is  
duly appointed and acting Executors (v  
O. Selznick and Charles H. Sachs), of  
of Myron Selznick, deceased, petitioner h  
affiant is duly authorized to verify the  
petition; that affiant has read the foreg  
tion, is familiar with the statements  
therein and that the facts stated are true  
to those facts stated to be upon inform  
belief and those facts he believes to be a

/s/ H. M. BARDT

Subscribed and sworn to before me this  
of June, 1947.

[Seal] /s/ JULIA M. FITZSIM  
Notary Public in and for the County of  
geles, State of California.

My Commission Expires February 17



# EXHIBIT A

Treasury Department  
Internal Revenue Service  
417 South Hill Street  
Los Angeles 13, California

Mar. 27, 1947.

Internal Revenue Agent in Charge,  
Es Division, LA:ET:90D:NAB

Myron Selznick, Deceased  
America National Trust and  
Association et al, Executors  
Beverly Drive  
Hills, California

is advised that the determination of the  
liability of the above-named estate, dis-  
efficiency of \$384,634.05, as shown in the  
attached.

accordance with the provisions of existing in-  
come laws, notice is hereby given of the  
deficiencies mentioned.

90 days (not counting Saturday, Sunday  
holiday in the District of Columbia as  
day) from the date of the mailing of this  
may file a petition with the Tax Court  
United States, at its principal address, Wash-  
D. C., for a redetermination of the de-

requested to execute the enclosed form  
ward it to the Internal Revenue Agent in  
Los Angeles, California, for the attention  
Conf. The signing and filing of this form  
pedite the closing of your return (x) by  
ting an early assessment of the deficiency  
ciencies, and will prevent the accumulation  
est, since the interest period terminates  
after filing the form, or on the date asse  
made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, J.

Commissioner.

By GEORGE D. MARTIN,

Internal Revenue A

in Charge.

Enclosures:

Statement

Form of waiver

LA:ET.90D:NAB

District of Sixth California

Estate of Myron Selznick

Date of Death: March 23, 1944

Statement

	Liability	Assessed
Estate Tax .....	\$678,733.97	\$294,099.92

In making this determination of the federal estate  
of the above-named estate, careful consideration has  
to the report of examination dated June 28, 1946, to  
dated November 8, 1946, and to the statements r  
hearing on January 20, 1947.

A copy of this letter and statement has been ma

to net estate :

basic tax as disclosed		
rn .....		\$ 974,850.04
value of net estate and		
n deductions:		
nd bonds .....	\$ 33,365.84	
iscellaneous property....	428,848.84	
s .....	301,848.37	
rs commissions .....	3,500.00	
y's fees .....	17,446.37	
decedent .....	42,110.01	827,119.43
		<hr/>
		1,801,969.47

a value of net estate and		
n deductions:		
expenses .....	\$ 154.10	
aneous administration		
es .....	7,295.44	7,449.54
		<hr/>
r basic tax as adjusted.....		\$1,794,519.93
r additional tax as		
		<hr/>
		1,834,519.93

Explanation of Adjustments:		
onds	Returned	Determined
.....	\$ 12,592.50	\$ 39,958.34
.....	6,000.00	12,000.00
	<hr/>	<hr/>
	18,592.50	\$ 51,958.34
.....		\$ 33,365.84

ained values of \$399.58 per share for stock of Myron  
(N.Y.) and of \$12.00 per share for stock of United  
are predicated upon consideration of all relevant  
elements of value disclosed by the evidence on file,  
ation being given to corporate earning and dividend  
ity.

.....	\$ 79,390.42	\$ 271,590.21
.....	2,186.67	9,594.77
.....	0	200,000.00
60—S.A.G. dues		
.....	0.	625.00
61—Return prem.		
employment tax .....	0	96.59
62—Return prem.		
D. ....	0	44.01
63—Refund of costs		

Addl. Item 65—Claim against

Robt. Donat .....

0

\$ 81,577.09 \$

Difference .....

The determined value of item 54 is predicated upon amount collected to March 26, 1946, plus one-half undistributed balances. See exhibit A accompanying 30-day details.

The determined value of item 55 is predicated upon amount collected. See exhibit B accompanying 30-day details.

The determined value of item 59 is based on the amount that would have been received by the estate if the tract with Hunt Stromberg had been terminated at the death and an accounting had of moneys and property.

Additional items 60, 61 and 62 are refunds received from the estate of dues and premiums paid prior to date of death.

Additional item 63 is a refund of costs received by the estate from Mr. Brannen in connection with the Pastor I. J. Brannen in 1941.

Additional item 64 is the amount received by the estate in settlement in full with Marguerite Roberts on accrued interest January 29, 1942 and March 23, 1944.

Additional item 65 is the amount owing to the estate at the date of death by Robert Donat and it is included at item 65 because it has not been shown that this claim was of no value.

Transfers during decedent's life:

The value of the following described property, transferred during the life of the decedent in his lifetime, is included in the gross estate because it was being determined that such transfer was intended to take effect at the death of the decedent in possession or enjoyment at decedent's death and except to the extent of the provisions of section 811(c) of the Internal Revenue Code.

Item 1 .....\$ 130,788.98 \$

Item 2 ..... 39,407.58

Funeral expenses ..... 5,649.90

Difference .....

Funeral expenses are allowed in the amount paid by the estate on file.

Executors' commissions .....\$ 40,000.00 \$

Difference .....

Executors' commissions are allowed in the total amount allowed by the Court and paid to date as shown by the evidence on file as follows:

f America N.T. & S.A.:  
 r 29, 1944, on account  
 tory commissions, \$7,-  
 cember 28, 1945, com-  
 allowed by the Court  
 ordinary services, \$20,-  
 otal, \$27,500.00.

s H. Sachs: December  
 on account of statutory  
 ons, \$2,500.00; Janu-  
 1945, commissions al-  
 the Court for extraor-  
 services, \$6,500.00; total,

al of commissions paid,	\$36,500.00		
fees .....	\$ 75,000.00	\$	57,553.63
.....			17,446.37

fees are allowed in the total amount allowed by  
 d paid to date as shown by the evidence on file, as  
 mber 21, 1944, extraordinary fees, \$6,500.00; Janu-  
 on account of statutory fees, \$5,000.00; December  
 ra fees, \$20,000.00; March 14, 1946, extra fees, \$22,-  
 h 14, 1946, on account of statutory fees, \$3,500.00;  
 .63.

c administration expenses:

.....	\$ 1,000.00	\$	1,295.44
Item 16. Arbitration			
Andy Devine .....	0		2,000.00
Item 17, Attorney fees			
arker, Milliken & Kohl-			
account .....	0		5,000.00
	<hr/>	<hr/>	
	\$ 1,000.00	\$	8,295.44
.....			7,295.44

he amount paid to White & Case for attorney fees  
 is allowed in lieu of the amount claimed as esti-  
 e.

t expenses paid to the S.A.G. is allowed as Addi-  
 6 and the amount paid on account to special tax  
 owed as additional Item 17.

dent:

.....	\$ 14,535.01	0
.....	27,575.00	0
	<hr/>	<hr/>

	Computation of Returned	Estate Tax Determined
Gross estate for basic tax .....	\$1,392,173.45	\$2,156,236.50
Deductions .....	417,323.41	361,716.57
Net estate for basic tax .....	\$ 974,850.04	\$1,794,519.93
Net estate for addi- tional tax .....	\$1,014,850.04	\$1,834,519.93
Gross basic tax .....		\$ 115,006.79
Credit for estate and inheritance tax ....		0
Net basic tax.....		
Total gross taxes (basic and addi- tional) .....	\$ 678,733.97	
Gross basic tax.....	115,006.79	
Net additional tax .....		
Total net basic and additional taxes .....		
Total tax payable .....		
Estate tax assessed:		
July 1945 list, page 102, line 3 .....		
Deficiency .....		

Upon receipt of a waiver, or upon the expiration from the date of this letter, if a petition is not filed with the Tax Court of the United States, \$292,628.62 of the deficiency will be assessed.

As the balance of the deficiency may be eliminated by the filing of a petition for State estate, inheritance, legacy, or succession tax, a reasonable opportunity will be accorded for the submission of the evidence required by section 81.9 of Regulations 105. If after a reasonable time the evidence is not filed, the balance of the deficiency will be assessed. Please advise when the credit evidence is expected.

Received and filed June 23, 1947. T.C.U.S.

[Title of Court and Cause.]

ANSWER

1 Revenue, for answer to the petition of  
-named taxpayer, admits and denies as

2. Admits the allegations contained in  
s 1 and 2 of the petition.

Admits that the taxes in controversy are estate  
that the asserted deficiency is in the  
\$384,634.05 as alleged in paragraph 3 of  
n and denies the remainder of said para-

(15), inclusive. Denies that the respond-  
as alleged in subparagraphs (1) to (15),  
of paragraph 4 of the petition.

. Admits the matter set forth in sub-  
(a) of paragraph 5(1) of the petition  
lack of information sufficient to form  
to the truth or falsity thereof it is denied  
n Selznick, Ltd., a New York corpora-  
engaged in the business of acting as agent  
and directors as alleged in said subpara-

denies the allegations contained in sub-  
(b) of paragraph 5(1) of the petition.  
Admits that 100 shares of Myron Selznick,  
valued at \$12,592.50 in item 22, Sched-  
Form 706 filed by the estate as alleged in  
aph (c) of paragraph 5(1) of the peti-  
denies the remainder of said subpara-



paragraph (a) of paragraph 5(2) of the petition except for lack of information sufficient to form a belief as to the truth or falsity thereof it is alleged that United Studios, Inc., was a Delaware corporation engaged in the business of holding real property and collecting rents therefrom as alleged in said subparagraph.

(b). Denies the allegations contained in paragraph (b) of paragraph 5(2) of the petition.

(c.) Admits that 1,000 shares of United Studios, Inc., were valued at \$6,000 in item 25 of Schedule of Form 706 filed by the estate as alleged in paragraph (c) of paragraph 5(2) of the petition and denies the remainder of said subparagraph.

(d). Admits the allegations contained in paragraph (d) of paragraph 5(2) of the petition.

5(3)(a) and (b). Admits the allegations contained in subparagraphs (a) and (b) of paragraph 5(3) of the petition.

(c). Denies the allegations contained in paragraph (c) of paragraph 5(3) of the petition.

(d). Admits that \$79,390.42 on account of commissions was reported in item 54, Schedule of Form 706 filed by the estate as alleged in paragraph (d) of paragraph 5(3) of the petition and denies the remainder of said subparagraph.

(e). Admits the allegations contained in paragraph (e) of paragraph 5(3) of the petition.

5(4) (a) to (d), inclusive. Denies the allegations contained in paragraph (e) of paragraph 5(4) of the petition.



chedule F of Form 706 filed by the estate as  
subparagraph (e) of paragraph 5(4) of  
on and denies the remainder of said sub-  
n.

admits the allegations contained in sub-  
n (f) of paragraph 5(4) of the petition.

to (d), inclusive. Denies the allegations  
in subparagraphs (a) to (d), inclusive,  
aph 5(5) of the petition.

admits the allegations contained in sub-  
n (e) of paragraph 5(5) of the petition.

. Admits the allegations contained in  
aph (a) of paragraph 5(6) of the petition.

denies the allegations contained in sub-  
n (b) of paragraph 5(6) of the petition.

admits the allegations contained in sub-  
n (c) of paragraph 5(6) of the petition.

denies the allegations contained in sub-  
n (d) of paragraph 5(6) of the petition.

admits the allegations contained in sub-  
n (e) of paragraph 5(6) of the petition.

and (b). Denies the allegations con-  
subparagraphs (a) and (b) of paragraph  
e petition.

admits the allegations contained in sub-  
n (c) of paragraph 5(7) of the petition.

denies the allegations contained in subpara-  
of paragraph 5(7) of the petition.

admits that as of the date of decedent's

graph (e) of paragraph 5(7) of the petition denies the remainder of said subparagraph.

(f) and (g). Denies the allegations in subparagraphs (f) and (g) of paragraph the petition.

(h). Admits the allegations contained paragraph (h) of paragraph 5(7) of the

5(8)(a). Admits the allegations contained subparagraph (a) of paragraph 5(8) of the petition.

(b). Admits the matter set forth in paragraph (b) of paragraph 5(8) of the petition the qualification "prior to June 6, 1932," denied.

(c) and (d). Denies the allegations in subparagraphs (c) and (d) of paragraph the petition.

(e). Admits the matter set forth in paragraph (e) of paragraph 5(8) of the petition except the qualification "after June 6, 1932" is denied.

(f). Denies the allegations contained paragraph (f) of paragraph 5(8) of the

(g). Admits that in his final determination the asserted deficiency, respondent included gross estate of decedent the property value as of the date of decedent's death 769.62 as alleged in subparagraph (g) of paragraph 5(8) of the petition and denies the remainder of said subparagraph.

admits the matter set forth in subparagraph of paragraph 5(9) of the petition except of information sufficient to form a belief truth or falsity thereof denies that the were made "on or about January 29, alleged in said subparagraph.

f), inclusive. Denies the allegations contained in subparagraphs (c) to (f), inclusive, of 5(9) of the petition.

admits that \$39,407.58 was reported as includible in the estate in Schedule G of filed by the estate as alleged in subparagraph of paragraph 5(9) of the petition and remainder of said subparagraph.

denies the allegations contained in subparagraph (h) of paragraph 5(9) of the petition.

admits that in his final determination of deficiency, respondent included in the estate of decedent \$188,275.31 on account of balance as alleged in subparagraph (i) of 5(9) of the petition and denies the remainder of said subparagraph.

) to (h), inclusive. Denies the allegations contained in subparagraphs (a) to (h), inclusive, of paragraph 5(10) of the petition.

admits the allegations contained in subparagraph of paragraph 5(10) of the petition.

) to (e), inclusive. Denies the allegations contained in subparagraphs (a) to (e), inclusive, of paragraph 5(11) of the petition.

5(12), (13) and (14). Denies the allegations contained in paragraphs 5(12), (13) and (14) of the petition.

5(15). Admits the allegations contained in paragraph 5(15) of the petition.

6. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ CHARLES OLIPHANT

Chief Counsel, Bureau of  
Internal Revenue.

Of Counsel:

B. H. NEBLETT,

Division Counsel.

E. A. TONJES,

H. A. MELVILLE,

Special Attorneys, Bureau of  
Internal Revenue.

Received and filed Aug. 19, 1947, T.C.U.

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[Title of Court and Cause.]

### STIPULATION

It is hereby stipulated and agreed by the parties to the above-entitled proceeding by their respective counsel, as follows:

respect to disposition of the issues set  
Petition as paragraph 4, subparagraphs  
3), (4), (5), (6), (7), (10), (11), (12),  
14). These are set forth below in para-  
numbered to correspond with said sub-  
of paragraph 4 of the Petition, the  
and agreements of the parties with  
these issues.

by stipulated and agreed that the Court  
follows:

value of 100 shares owned by decedent  
stock of Myron Selznick, Ltd., a New  
Corporation, was \$26,000 on the date of death  
of decedent.

value of 1000 shares owned by the de-  
capital stock of United Studios, Inc., a  
Corporation, was \$6,800 on the date of de-  
ath.

value of commissions payable by cli-  
decedent represented as agent, referred  
to in 54 in the statement accompanying the  
Petition, on the date of decedent's death  
was \$4,000.

value of the claim of decedent for com-  
pensation receivable under a contract between Myron  
Selznick and Myron Selznick, Inc., parties of the  
Petition and Leland Hayward, Leland Hayward,  
Leland Hayward Co., Ltd., Leeward Royalties,  
Deverich and Hayward-Deverich, par-

(5) The value of the claim of decedent's commissions under an agency contract with Stromberg, was \$20,000 on the date of death.

(6) The value of a claim of decedent's Marguerite Roberts for commissions was the date of decedent's death.

(7) A claim of decedent against Rob for moneys advanced, on the date of death had no value.

(10) A claim of Florence A. Selznick of the decedent's estate in the amount of is not an allowable deduction for Federal tax purposes.

(11) A claim of Mildred Selznick of decedent's estate in the amount of \$27,000 is allowable as a deduction for Federal estate tax purposes in the amount of \$20,681.

(12) and (13) Federal and State income and State property taxes and interest thereon accrued prior to the date of decedent's death and administration expenses incurred by the decedent, claimed in the estate tax return nor allowed in the 90-Day Letter, are properly deductible in the amount of \$33,589.79. In addition, if the following circumstances occur, further fees of counsel in the proceeding shall be allowed as an additional deduction as follows:

If an appeal from this proceeding to the Circuit Court of Appeals is taken by either

party thereafter applies for a writ of  
to the Supreme Court of the United  
further deduction for such fees of \$1,000  
owed, upon proof of payment of same.

a writ of certiorari is granted, a further  
for such fees of \$2,500 shall be allowed,  
of payment of same.

h respect to this proceeding, the Peti-  
incurred or will incur other costs and  
nd the amount thereof (not exceeding  
le amount), if properly established by  
ner, will be allowed as a deduction in any  
n made herein pursuant to Rule 50.

nder the provisions of Section 813(b) of  
l Revenue Code, as amended by Section  
Revenue Act of 1939, and limited by  
5(a) of the Internal Revenue Code, a  
state inheritance taxes in the amount  
or by law shall be allowed to the peti-  
time prior to sixty days after the deci-  
Tax Court herein becomes final, if proof  
is established in accordance with the  
of Section 81.9 of Regulations 105.

tion of Facts with Respect to Issues  
9 as to Which the Parties Are Still in  
e.

ies hereby submit to the Court for its  
e issues set forth in subparagraphs (8)  
f paragraph 4 of the Petition. It is



1. On January 29, 1932, the decedent executed a Declaration of Trust naming the Colonial Trust and Savings Bank of Louisiana as trustee and said Bank accepted said Declaration to it as Trust Number 6969. A copy of said Declaration of Trust is attached hereto and is designated 1-A.

2. The decedent transferred assets to said trust as follows:

a. On January 29, 1932, decedent transferred to said trust, assets (other than life insurance contracts) having a value on the date of decedent's death of \$152,951.83. After June 6, 1932, decedent transferred to said trust, assets (other than life insurance contracts) having a value on the date of decedent's death of \$130,817.75. In addition, it is stipulated and agreed, in accordance with the will, that the sum of \$28.81 is properly includible in decedent's gross estate (and which represents \$28.81 more than the sum reported in the estate tax return on the basis of such assets).

b. Decedent also transferred to said trust, life insurance contracts owned by him, copies of which are filed herewith as Exhibits, as follows:

Policy Number	Name of Issuing Insurance Company	Amount
4,330,590	Mutual Life Insurance Company.....	\$
10,484,859	New York Life Insurance Company..	\$
10,484,860	New York Life Insurance Company..	\$
10,541,918	New York Life Insurance Company..	\$
62,036	Peoples Life Insurance Company.....	\$
63,287	Peoples Life Insurance Company.....	\$
108328-R	Indianapolis Life Insurance Co.....	\$



ent executed by decedent on the dates said instruments and delivered by decedent's trustee on said dates. The total proceeds of life insurance contracts, as of the date of decedent's death, were \$188,275.31, of which the amount allocable to premiums paid prior to January 1, 1941, was \$148,805.10, and the portion allocable to premiums paid after said date was \$39,470.21. In which latter sum, it is stipulated and agreed that, in any event, includible in decedent's estate (and which represent \$62.63 more than was reported in the estate tax return on account of said insurance).

Set forth in the Declaration of Trust (Exhibit 11-K), Article VII), the net income of said trust is to be paid to Myron Selznick. Attached as Exhibit 11-K is a statement showing the amounts of all payments made by the trustee under said trust to Myron Selznick, from the date of creation of the trust to the date of decedent's death. On the date of decedent's death there was on hand \$36 of income of said trust on hand with which decedent had accrued and which had not been distributed to the decedent.

It is hereby stipulated and agreed that, notwithstanding the Court's decision with respect to the estate tax, as shown below, the amounts includible in decedent's estate on account thereof will be as fol-

includible in gross estate, the amount in gross estate on account of said trust (which is \$91.44 more than the amount in account thereof in the estate tax return)

b. If the Court finds that the non-insurance assets transferred to the trust prior to June 6, 1932, are not includible in gross estate but the insurance contracts transferred to the trust prior to June 6, 1932, are includible in gross estate, then the amount includible in gross estate on account of said trust is \$319,093.10.

c. If the Court finds that all of the assets transferred by decedent to said trust (including non-insurance assets and insurance contracts) are includible in gross estate, the amount in gross estate on account thereof is \$472,041.10.

Dated November 29, 1948.

/s/ LUCIEN W. SHAW,

Counsel for Petitioner

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal Revenue  
Counsel for Respondent.

Filed Nov. 29, 1948. T.C.U.S.

# EXHIBIT 1-A

s National Trust & Savings Bank

Trust No. 6969

## Declaration Of Trust

l Men By These Presents: That the  
tional Bank of Los Angeles, a national  
ociation, with its principal office at Los  
lifornia, hereinafter called Trustee, does  
it, certify and declare that Myron Selz-  
dent of Beverly Hills, California, here-  
ed Trustor, has conveyed, transferred  
ed to the said Trustee the sum of One  
ousand and (\$100,000.00) Dollars lawful  
ne United States, hereinafter sometimes  
as "money and/or securities"; that in  
ereto, the said Trustor has assigned to  
Trustee, as Trustee, certain insurance  
schedule of which is attached hereto,  
hibit "A", and by this reference made  
of as if herein fully set forth.

eed that no consideration was given by  
e for the delivery to it of said sum of  
or said securities, and that the same has  
ived and accepted by it and will be here-  
y it in trust, under the terms and con-  
forth in this Declaration, and that the  
any and all of said policies of insurance.  
any other policies upon the life of the

ing uses and purposes, and subject to the  
and reservations and upon the trusts  
to-wit:

## Article I.

It is an express condition of this trust  
Trustee shall not be responsible nor as  
liability for the nature, value or extent  
to any sum of money, securities or other  
accepted In Trust hereunder, or any secu  
or other property that may hereafter be  
to it and added to this trust, as hereinafter  
nor for any adverse or conflicting claims  
therein of other persons, nor for the valu  
or collectibility of any securities or note  
paper received by it; but that its only lia  
be for such right, title and interest as it  
received or hereafter acquire under an  
ances, assignments and transfers, and for  
as it may collect from any property rece

## Article II.

The Trustor agrees that as to the  
policies delivered to the Trustee or which  
after be delivered to it:

To cause each and every policy inter  
made subject to this agreement and  
hereunder to be made payable to the  
sufficient designation as beneficiary ther  
such other manner as the parties heret  
insurer shall agree, and the Trustee a

agreement by which any policy shall  
able to it.

### Article III.

tee is authorized and empowered to re-  
d, subject to the provisions hereof, said  
ney and securities, and also any addi-  
rty and/or securities the Trustor may  
time add to the principal of this trust,  
of the trust estate and not at the risk  
ee, and without liability for decrease in  
f such property or securities. Said  
ereby given full power of sale and ex-  
nnection with the property and securi-  
ne to time comprising the principal of  
nd is authorized and empowered from  
, subject to the restrictions hereinafter  
invest, reinvest, loan and reloan the pro-  
sh principal in any securities, properties  
ents permissible by law for investment  
ds, and upon such terms and conditions  
Trustee may deem to be for the best in-  
s trust; said Trustee to use reasonable  
o protect all persons interested in this  
oss by reason of such loans or invest-

ne lifetime of the Trustor, Myron  
sale or exchange of property which may  
comprise the principal of the trust

Trustee except on the written order and of said Trustor or his duly authorized agent. The said Trustor during his lifetime hereby releases himself and/or his agent to be designated from time to time, the right to direct, in whole or in part, the said Trustee as to the investment of all cash and property in any securities and/or property whether or not the same may be approved and permitted by law for investment of trust funds under the laws of the State of California. After the death of the said Trustor, the said Trustee shall only sell, exchange, or reinvest in securities permissible by law for investment of trust funds as above provided without the written approval of any two of the Trustees, David O. Selznick and Loyd Wright, and upon the written request of either the said David O. Selznick or Loyd Wright, then upon the approval of the said Trustor or them; and/or if all of the above named Trustees should have previously died and/or neglected to act within a reasonable time after the request of said Trustee, then in the absence of the said Trustee, in the uncontrolled discretion of said Trustee. The said Trustor shall be fully protected in respect of any changes, investments and reinvestments directed by the Trustor and/or the said David O. Selznick and Loyd Wright, and it shall not be liable or responsible in any way for damages or loss incurred by reason of any such changes, investments or reinvestments, nor shall the said Trustor standing anything herein to be com-

pus or said trust estate in any security written by the said Trustee, or in which Trustee is directly or indirectly interested. Trustor hereby reserves the right by written instrument filed with the Trustee, to revoke said instrument of David O. Selznick and/or Loyd Selznick to substitute other persons to act for Trustor of David O. Selznick and/or Loyd Selznick in the capacities herein in this paragraph and to permit them to act.

Trustee may, if it so elects, cause any and all shares of corporate stock, now or that may hereafter be the subject to this trust, to be transferred to the Trustee, as Trustee under its instrument of 1969, and either name the beneficiaries in said instrument certificate and/or furnish said corporate stock with the names of the beneficiaries and/or a copy of the Declaration of Trust; or hold the corporate stock in this trust without transfer to Trustor, and/or it may hold the same in the name of Trustor and/or the name of the bene-

fits and dividends accruing on shares of the capital stock of the corporation which form a part of the trust estate and payable in shares of the corporation, shall be deemed principal. Trustee shall have the option of receiving dividend either in cash or in shares of the corporation, it shall be considered



choice made by the Trustee. All rights to the shares or other securities or obligations of such corporation accruing on account of the ownership of shares in such corporation and the exercise of any such rights, shall be deemed to be sold in any sale of such rights, shall be deemed to be sold.

Said Trustee is directed to charge all expenses of the trust on investments and to credit all discounts and interest on investments against or to principal, as the Trustee may determine, and not against or to income. In all matters relating to the said Trustee is hereby vested with absolute and uncontrolled discretion and power to determine what shall constitute principal of the trust estate, and what shall constitute gross income therefrom, or net income after payment of taxes, and distribution under the terms of this trust. The Trustee may also, at its discretion, and subject to the retaining the consent of the Trustor, if living, or if either of said David O. Selznick and Loyd Wright be dead, or if they be dead, then in its discretion, to sell, alone, improve any real property subject to the trust, build, alter, or repair any improvements thereon, of such character, amount, cost, and location as such funds or property subject to this trust may deem advisable.

Said Trustee may loan or advance its money or property to the trust estate, for any trust purpose, and may fix the rates of interest, which loan or advance shall thereupon become a first lien on the assets of the trust estate as to both principal and income, and shall be repaid to said Trustee before any other distribution of income or principal.



#### Article IV.

Trustee hereunder shall resign under the conditions which it hereby expressly reserves for itself. If its successor or successors in office, the Trustee shall be appointed by any court having jurisdiction in the County of Los Angeles, California, acting upon or in response to a petition of the resigning Trustee and/or the beneficiaries, living, and/or any beneficiary.

#### Article V.

Trusts hereunder created and declared shall be subject to the following conditions and agree-

ments to the extent that it shall be deemed necessary by the Trustee to disclose the contents of the trust to any insurance or other company or to any person for any purpose of the trust, or in connection with any proceedings in any court of competent jurisdiction to enforce any of the provisions of the agreement or to appoint another Trustee, or in any controversy effecting this trust, the provisions of Section 103 of the Civil Code of the State of California and any similar provisions hereafter enacted or declared.

Any provision of this agreement shall be void, such invalidity shall be without effect upon the other provisions hereof, and each provision and agreement hereunder shall be deemed separate and distinct from any

passing of any interest in the trust estate paid out of the principal of the taxable interest. All other taxes payable shall be of principal and charged by the Trustee in its discretion it deems fair and equitable.

(d) Whenever the trust estate or any part thereof shall be distributable, the Trustee, in its discretion, may transfer and deliver to the beneficiary in the form in which then held by the trust estate, securities and investments at the market value thereof equivalent in amount to the distributable share or interest, or may convert the trust estate or any part thereof into cash for distribution.

(e) In all matters of interpretation, construction, necessary to give effect to any provision of this agreement, the masculine shall include the feminine and the singular shall include the plural.

(f) This trust has been created, declared and accepted by the Trustee in the State of New York and shall be interpreted and enforced in accordance with the laws of said State.

(g) The terms "policy" and "policy of insurance," whenever used in this agreement shall include all forms of insurance upon the life of the Trustor, including accident insurance payable upon the event of his death.

(h) Each and every beneficiary of the trust hereunder created and declared, including the Trustor, shall have no right, title or interest in the trust estate or any part thereof.

ir, or encumber his or her beneficial  
al interest in the trust estate, and no in-  
of attempted assignment, transfer, or  
on thereof shall be effective for any pur-  
ever, and neither the principal nor the  
the trust estate, nor any part thereof,  
ble for the debts of any beneficiary nor  
to attachment, execution or other process  
t.

s agreed that the Trustee shall not be  
for any act or omission hereunder unless  
itutes gross negligence, nor shall it be  
bring or defend suit hereunder, unless  
to its own satisfaction.

shall be the duty of every beneficiary to  
Trustee is directed to make payment or  
of any kind hereunder to notify the  
the happening of the event or events  
uch beneficiary becomes entitled to re-  
and to furnish reasonable proof thereof.  
e Trustor warrants, represents and states  
olvent and that there are no judgments  
, and that he has created this irrevocable  
nt intent to hinder, delay or defraud any  
at, in so far as the provisions hereof may  
nt the income shall be payable to the  
shall, for the purposes of the provisions  
laration of Trust and as to said income,  
and construed a beneficiary.

estate or from the principal thereof, if the income is insufficient, the Trustee shall first pay, out of the income, charge, as and when due, any and all taxes, assessments, advancements and other expenses of every kind and nature expended or incurred in the management and protection of the trust estate of this trust, and the payment when due of the income and all income taxes, inheritance taxes, gift taxes, taxes levied or assessed upon the trust estate, and the beneficiaries hereunder or the income therefrom, and shall, after sufficient cash or other assets have been deposited in this trust so that the income therefrom shall be sufficient, (until such time as the Trustor agrees to pay said premiums himself) pay any and all premiums on life insurance policies and/or contracts which may be transferred to or delivered by the Trustor to the Trustee for its use to the terms hereof, and also pay to itself a reasonable compensation for its own services as Trustee, as follows:

(a) A sum equal to one-tenth of one per cent ( $1/10$ th of 1%) of the reasonable value of the estate for the acceptance of this Declaration of Trust and other instruments in relation hereto, and a like sum for any additions that may be made to the principal of this trust. Minimum Twenty-Five Dollars (\$25.00).

(b) An annual compensation, payable quarterly, equal to three-fifths of one per cent ( $3/5$  of 1%) of the reasonable value of the principal of the estate for its ordinary and usual duties.

sum equal to one per cent (1%) of the value of the principal of the trust estate at termination, distribution, closing and settlement of the trust according to the terms hereof. The Trustee shall pay reasonable compensation for any unusual or extraordinary services rendered by it as Trustee and the amount to be fixed by court.

### Article VII.

This trust is irrevocable. The entire net income and profits derived from the trust estate and available for distribution hereunder shall be by said Trustee paid monthly or in other convenient installments as directed by the Trustor to Myron Selznick during his lifetime; the said Myron Selznick, who reserves the right to direct the Trustee from time to time to credit, keep and add any and all income which, pursuant to the terms hereof, may be paid to him, to the principal of the corpus of the trust estate, by giving written instructions from time to time so demanding.

### Article VIII.

After the death of the said Myron Selznick the entire net income received or derived from the trust estate and available for distribution shall go and be paid by said Trustee in monthly installments, as follows:

As long as the net distributable income remains in the corpus of the trust estate does not

1. One-half ( $\frac{1}{2}$ ) of the net income shall be paid to the widow of the Trustor, if living at the issue of the body of the Trustor survive and share alike. In this connection, the guardian surviving of the issue of the body of the Trustor shall, during the minority of any child, receive the share herein provided to be received by the issue during his or her minority.

2. Of the remaining one-half ( $\frac{1}{2}$ ) of the net income, for and during the lifetime of the Trustor and father of the Trustor, Fifty Per cent of said remaining one-half shall be paid in monthly installments to each of L. J. Seligman, father of Trustor, and Florence A. Seligman, mother of Trustor, and upon the death of either of them the survivor of the said father and mother of the Trustor shall receive, during his or her lifetime, all of the one-half of the net income herein provided in sub-paragraph 2 referred to. The Trustor makes no provision herein for his brother David Seligman, brother Howard and his family, during the lifetime of either his father and/or mother, for the reason that he has full faith and confidence in the fact that his mother and father will should necessity arise, as they have always done, amply provide for the support of David and the said Howard and his family from the moneys they receive from this trust.

Upon the death of the last survivor of the mother and father of the Trustor, the remaining one-half of the net income referred to in

0%) Per Cent thereof to David O. Selz-  
ner of Trustor, and the remaining fifty  
cent to Howard Selznick, the brother  
, and the children of Howard Selznick,  
share alike, subject to the following con-  
s to Howard Selznick, as long as he shall  
the children of Howard Selznick as long  
all remain single, during the life of this  
n any child of Howard Selznick marry-  
uch child shall be entitled to receive his  
re of said income for one year there-  
er the expiration of one year from the  
h child's marriage, he or she shall have  
interest in the income, as provided in  
raph. The share of the net income to be  
the surviving children of the said Howard  
nall, during their minority, at all times  
to the guardian of the estate of each of  
en. When and as each of the children of  
rd Selznick marry, she or he shall be  
the Trustee Twenty Five Hundred  
Dollars, from the principal of the  
the trust estate, which shall be charged  
at portion of the principal from which  
oward Selznick and his children receive  
of the net income of the corpus of the  
. (In this connection, Trustor states that  
Howard, at the date of the execution of  
has two children, Ruth Selznick and



in contemplation of the fact that said Howard Selznick may have other issue of his body.)

death of the said Howard Selznick, or a child or children, the income to which the one so surviving would be entitled, if living, shall, during the lifetime of the survivor or survivors, (subject to the qualifications hereinafter set forth), be paid to such survivor or survivors. In this connection, notwithstanding anything herein in this document to the contrary, the children of the said Howard Selznick, upon marriage, shall be entitled to receive their share of the income herein provided to be paid them, for one year after his or her marriage only, and upon the termination of that one year period, that portion otherwise provided to be paid to such child as shall have married, shall be distributed to the said Howard Selznick and/or his children of his children who may then survive and/or be married, and upon the expiration of that one year period for the last of said children of the said Selznick who may marry, and upon the death of the said Howard Selznick, or upon the death of the last survivor of the said Howard Selznick and/or his children should they not marry, or any of them should they marry, the income herein provided to be paid to the said Howard Selznick and/or his children shall be paid to the widow of the Trustor, if she survives; if not, to the daughter of the Trustor, Jean Selznick, and/or if he leaves more than one issue of his body to his issue (including Jean Selznick).



death of the said David O. Selznick, that the net income hereinbefore provided to him shall likewise be payable to the said Trustor, and if she does not survive the O. Selznick, then to the child or children Trustor, share and share alike, if there an one.

and after the death of the widow of the she survives him, and/or if she predeceases the Trustor, then upon the Trustor's death, one-third of the net income of the corpus of the trust (and balance of income of the corpus of the trust estate if she then be receiving or be entitled to the same pursuant to the terms hereof), shall be payable to Joan Selznick, daughter of the Trustor, if there be more than one issue of the Trustor surviving, then to his issue share and share alike, until the death of the last surviving of David O. Selznick, Howard Selznick, L. B. Selznick, Florence A. Selznick, Ruth Selznick, and upon the death of the last surviving of them the trust shall cease and the principal and undistributed income shall be payable as follows:

(a) To the issue of the body of Myron Trustor, share and share alike, and to the issue of any deceased issue per stirpes and by right of representation.

(b) If there be no such issue as referred to in the foregoing sub-paragraph 2, to the issue of the named charitable institutions, to-wit: L. J. Selznick Orthopedic Hospital for Children.

The Trustor reserves the right to change or substitute, from time to time, the said charitable institutions, by giving notice of such change to the Trustee in writing.

Notwithstanding anything herein to the contrary, if and in the event the said Trustor dies leaving surviving a widow, and in the event of the death of Selznick and any other issue of the body of the said Selznick shall predecease David O. Selznick, Howard Selznick and/or Ruth and Florence Selznick, and the said Joan or other issue of the said Selznick leave no issue, then the net income from the said trust estate shall be distributed and paid as follows:

(a) The whole of the net income shall be paid to L. J. Selznick and Florence A. Selznick, share and share alike, or the survivor of them for their lifetime.

(b) Upon their death, and so long as the said Selznick survives, Fifty (\$50.00) Dollars shall be paid to each of said Howard Selznick and his issue, share and share alike and the balance of the net income shall be paid to the said Joan or other issue of the said Selznick, share and share alike.

On the death of Howard, if David survives, Fifty (\$50.00) Dollars per week to each of his surviving children of Howard Selznick, during his or her lifetime, subject to the qualification, however, that if any of the children of Howard Selznick survives, then the share of the income received by the child or children as does marry shall only for a period of one year after his or her marriage; thereafter the portion of the income to which the child or children would otherwise have been entitled shall go to David O. Selznick, and it is further, that the balance and remainder of the income, after deducting the Fifty (\$50.00) Dollars payments to Howard and the survivors of him, subject to the foregoing qualifications, shall go and be paid to David O. Selznick, if he survives them.

If David O. Selznick predeceases them, the income shall be payable to the said Howard and his children, or the survivor of them, share equally alike, during their lifetime, and upon the death of the last of the survivor of Howard and his children the trust shall cease and the principal and undistributed income of the trust estate shall be made payable and the Trustee be transferred, set aside, and the same to the following named charitable institution: Los Angeles Orthopedic Hospital.

tutions, by giving notice of such change of distribution to the Trustee in writing.

Notwithstanding anything herein to the contrary, if and in the event the net income from the trust estate exceeds an average of Fifteen Thousand (\$15,000.00) Dollars per year, but does not exceed Thirty Thousand (\$30,000.00) Dollars per year, then and in such event the foregoing provisions shall be changed in the following particulars, and in no others, to-wit:

The children of Howard Selznick shall each receive upon their marriage Five Thousand (\$5,000.00) Dollars instead and in lieu of Twenty Five Hundred (\$2,500.00) Dollars each, and they shall receive Fifty (\$50.00) Dollars per week if the net income hereinbefore provided for exceeds the net income under such circumstances and at the times when they are hereinbefore provided to receive their portion of said net income. Notwithstanding anything herein to the contrary, the surplus over and above an average annual income of Thirty Thousand (\$30,000.00) Dollars per annum derived from the trust estate and all such surplus shall be distributed as follows:

(a) To the widow of the Trustor, for her life and for her lifetime.

(b) Upon her death, to Joan Selznick, if she survives, and other issue of the body of Mr. Selznick, if any there be and if any survive, and if any survive, share alike, as to the issue of such child

here be no widow of the Trustor survive the issue of the Trustor shall die without issue, then said surplus shall be paid to L. J. and Florence A. Selznick, father and mother respectively, of the Trustor, if living, or survivor of them, and thereafter to the said David O. Selznick, if living, and upon his death to be accumulated and added to the principal of the trust estate.

### Article IX.

Notwithstanding anything herein to the contrary, in the event of the death of the Trustor, the intention, desire, and the Trustor hereby declares that if and in the event, and under any circumstances, his legal wife survives him as his widow, and after his death she should remarry, then all income herein provided to be paid to her shall be divided and she shall receive one-half thereof of the moneys, (either income or principal) and as, pursuant to the terms hereof, she is entitled to receive the same, and the remainder of such principal and/or income herein provided to be paid her shall be paid to her and distributed in the same manner as is here- provided in the event the wife of the Trustor shall have predeceased the Trustor.

### Article X.

The Trustor declares that he is married; that his

Selznick. Trustor wishes to provide, how makes this Declaration of Trust in con of the fact that there may be more than of his body, and for that reason has throu instrument made provision for the said Jo of her interest herein with any other is body, share and share alike.

### Article XI.

Notwithstanding the fact that this Dec Trust is irrevocable, the Trustor, for h on behalf of the beneficiaries, reserves t petition any court of competent jurisdic time and from time to time to amend a strue the same; provided, however, that ment shall change the provisions of this t shall have the effect or which is intended cause the same to be construed to be or a be a revocable trust rather than an irrev

The Trustor reserves the absolute righ or cause to be cancelled, and revoke or c revoked, any of the insurance policies ferred to, or which may hereafter be ad Trust, provided that he first obtain the w sent of any two of the following, to Trustee, David O. Selznick and Loyd W vided further, that upon any cancellation surrender values received on any such po remain in and/or be added to the corp Trust.

## Article XII.

standing anything herein to the contrary, shall terminate upon the death of the last of the Trustor, Marjorie Daw Selznick, Selznick, David O. Selznick, Howard Selznick, Selznick, father of the Trustor, Florence A. Selznick, mother of the Trustor, and Ruth and Florence Selznick, nieces of the Trustor, all of whom survive, and the trust estate distributed as herein provided.

## Article XIII.

Income accrued or undistributed at the termination of any trust or estate hereunder, shall go to the beneficiary or beneficiaries of the next eventual estate, in the same proportion as the principal hereof, provided, however, on express condition of the trust herein which shall take precedence over any and all provisions herein relative to the distribution of the trust estate, that the Trustee is authorized and empowered and may in its sole and absolute discretion, although it is not obligated so to do, set aside income and/or principal of the trust in such manner as to it may seem equitable, to pay a reasonable sum toward the expenses of illness and of the funeral of the Trustor or of any specifically named or contingent bene-



Wherever in this agreement it is provided that the Trustee shall cease making payment to any beneficiary upon the happening of any contingency such as marriage or otherwise, it shall not be the Trustee or responsible by making payment pursuant to the terms of this trust to any beneficiary or person interested in this trust, until notified in writing and due proof satisfactory to the Trustee of the happening of such contingency as pursuant to the terms hereof operates to change the payment theretofore in effect.

In Witness Whereof, said Citizens Trust & Savings Bank of Los Angeles, has caused its corporate name to be subscribed hereunto and its corporate seal to be affixed hereunto by its President and Assistant Trust Officer duly authorized, this 29 day of January 1934, at Los Angeles, California.

CITIZENS NATIONAL  
& SAVINGS BANK  
LOS ANGELES, as Trustee

By HALCOTT B. THOMAS  
Vice-President.

VICTOR T. JOHNSON  
Assistant Trust Officer

I, the Undersigned, Myron Selznick, do hereby certify that I am the person named in the foregoing Declaration of Trust, and that the same is true and correct.



st is irrevocable; that said Declaration  
ly and accurately sets out the terms and  
r and upon which the property therein  
s to be held, managed and disposed of  
stee therein named, and I do hereby  
nt to, approve, ratify and confirm the  
particulars.

Los Angeles, California, this 29 day of  
32.

MYRON SELZNICK,  
Trustor.

dersigned, Marjorie Daw Selznick, wife  
elznick, the Trustor in the above and  
eclaration of Trust, having read said  
of Trust in its entirety and clearly  
ng the same, do hereby accept the terms  
ns of said trust, and I do hereby ratify,  
d confirm the same, and that I, by this  
do, pursuant to my right to contract,  
quish and forever quitclaim any and all  
and to the moneys and securities de-  
hereafter to be deposited by the said  
nick in said Trust, and/or other prop-  
rties, including insurance agreements,  
paid thereon, as well as the proceeds  
en and as collected, and that each, all  
of the moneys, property, securities, in-  
icies, and the proceeds thereof, I do

be constituted as a waiver of any right  
may have by reason of the terms and conditions of the  
said Trust, if any.

Dated at Los Angeles, California, this  
January, 1932.

MARJORIE DAWSON

EXHIBIT "A"

No. 192324

The Indianapolis Life Insurance  
Company of Indianapolis, Indiana

No. 62036

Peoples Life Insurance Company.

No. 63287

Peoples Life Insurance Company.

No. 10484859

New York Life Insurance Company

No. 10484860

New York Life Insurance Company

No. 4330590

The Mutual Life Insurance Com  
pany of New York . . . . .

No. 10541918

New York Life Insurance Company

Policies taken out since the above ex  
made out

No. 109395

The Indianapolis Life Insurance  
Company of Indianapolis, Indiana

# EXHIBIT 11-K

f Payments of Net Income to Myron  
 from Trust Number 6969, made by  
 National Trust and Savings Bank of  
 eles as Trustee.

	Amount of Payment
.....	\$ 431.34
1933 .....	1589.04
33 .....	1624.21
, 1933 .....	811.03
1933 .....	819.47
1934 .....	146.97
4 .....	2410.62
934 .....	1422.41
, 1934 .....	1334.95
1934 .....	1262.59
1934 .....	459.22
1935 .....	2448.77
35 .....	716.00
.....	1879.53
935 .....	2376.99
, 1935 .....	544.65
1935 .....	436.68
1935 .....	1571.99
1936 .....	23.98
1936 .....	714.90
.....	480.00
.....	100.00

September 3, 1936 .....  
September 21, 1936 .....  
October 7, 1936 .....  
November 6, 1936 .....  
January 9, 1937 .....  
February 5, 1937 .....  
March 3, 1937 .....  
May 5, 1937 .....  
July 6, 1937 .....  
August 6, 1937 .....  
September 3, 1937 .....  
April 11, 1940 .....  
June 5, 1940 .....  
November 8, 1940 .....  
March 18, 1942 .....

Docket No. 14985

OF MYRON SELZNICK, Deceased,  
OF AMERICA NATIONAL TRUST  
SAVINGS ASSOCIATION, DAVID O.  
SELZNICK and CHARLES H. SACHS, Ex-

Petitioners, -

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

Property transferred to a trust under which  
the estate in the income was reserved to  
petitioners or is includible in the gross estate of  
the donor under section 811 (c), I.R.C.  
as to L. Church, . . . U.S. . . . (January 17,

W. C. SHAW, ESQ.,  
Petitioners.

CHARLES H. SACHS, ESQ.,  
Respondent.

MEMORANDUM OPINION

Judge.

Respondent determined a deficiency in estate  
tax of \$6,634.05 consequent upon his holding,

The parties entered into an extensive stipulation by which numerous issues were disposed of. The stipulation is incorporated herein by reference and adopted as formal findings of fact. Efforts have been given to such stipulations in the recomputation of the estate tax subsequent hereon. The following facts were stipulated or appear from the pleadings:

Bank of America National Trust and Savings Association, a national banking association organized under the laws of the United States, Selznick and Charles H. Sachs are the trustees appointed and acting executors of the last will and testament of Myron Selznick, who died on January 23, 1944.

The Federal estate tax return of the estate of the decedent was duly filed with the collector of internal revenue for the sixth district of California on June 22, 1945, and the sum of \$294,099.95 was paid to said collector on said date as Federal estate tax of said estate.

On January 29, 1932, the decedent executed a Declaration of Trust naming the Citizens Savings and Trust and Savings Bank of Los Angeles as trustee, and said bank accepted said trust, referred to herein as Trust No. 6969.

Article VII of the trust agreement reads as follows:

This Trust is irrevocable. The entire income to be received and derived from the trust property and available for distribution hereunder shall be paid to the

nick for and during his lifetime; the Selznick, however, reserves the right the Trustee from time to time to credit, and any and all income which, pursuant hereof, may be payable to him, to the the corpus of the trust estate, by giving instructions from time to time so de-

reads as follows:

Understanding the fact that this Declaration is irrevocable, the Trustor, for himself and on behalf of the beneficiaries, reserves the right to petition any court of competent jurisdiction at any time and from time to time to amend or to alter the same; provided, however, that no such amendment shall change the provisions of this Declaration which shall have the effect or which is intended to shall cause the same to be construed and held to be a revocable trust rather than an irrevocable one.

The Trustor reserves the absolute right to cancel or to be cancelled, and revoke or cause the cancellation of, any of the insurance policies herein provided for or which may hereafter be added to the policies provided that he first obtain the written consent of any two of the following, to wit: David O. Selznick and Loyd Wright; and further, that upon any cancellation any cash values received on any such poli-



The decedent transferred assets to said trust, as follows:

On January 29, 1932, decedent transferred to said trust, assets (other than life insurance contracts) having a value on the date of decedent's death of \$152,951.83. After June 6, 1932, decedent transferred to said trust, assets (other than life insurance contracts) having a value on the date of decedent's death of \$130,817.79, which amount was stipulated and agreed, in any event is includible in decedent's gross estate (and represents \$28.81 more than the amount reported on the estate tax return on account of such transfers).

Decedent also transferred to said trust, life insurance contracts owned by him, as follows:

Policy Number 4,330,590, Mutual Life Insurance Company, \$25,000.

Policy Number 10,484,869, New York Life Insurance Company, \$25,000.

Policy Number 10,484,860, New York Life Insurance Company, \$25,000.

Policy Number 10,541,918, New York Life Insurance Company, \$50,000.

Policy Number 62,036, Peoples Life Insurance Company, \$25,000.

Policy Number 63,287 Peoples Life Insurance Company, \$5,000.

Policy Number 108,328-R, Indianapolis Life Insurance Company, \$10,000.

Policy Number 102,224, Indianapolis Life Insurance Company, \$10,000.

umber 109,395, Indianapolis Life Insurance Company, \$5,000.

to the life insurance contracts are true instruments of assignment executed by on the dates shown on such instruments red by him to the trustee on such dates. proceeds of said life insurance contracts, ate of decedent's death, were \$188,275.31, he portion allocable to premiums paid nuary 10, 1941 was \$148,805.10, and the ocable to premiums paid after said date 0.21, which latter sum, it is stipulated, is in any event, includible in decedent's e (and which represent \$62.63 more than eported in the estate tax return on ac- id insurance).

rth in the Declaration of Trust, the net said trust was to be paid to Myron Selznick thereto is a statement showing the amounts of all payments made by the er said trust to Myron Selznick, from creation of the trust to the date of death. On the date of decedent's death \$1,138.36 of income of said trust on hand trustee which had accrued and which had distributed to the decedent.

so stipulated if the Court finds that all ts transferred by decedent to said trust both non-insurance assets and insurance

On the above facts and others appearing in the stipulation and exhibits, petitioners contend that none of the assets transferred to the trust should be included in the taxable estate.

The brief was filed but a few days before the Supreme Court rendered its decision in *Commissioner v. Estate of Francois L. Church, Deceased* (January 17, 1949). In that case the Court overruled *May v. Heiner*, 281 U.S. 581, and *Hassett v. Welch*, 303 U.S. 303, and ruled on issues closely paralleling in all substantial respects the issues here present that the reservation of life interest was a decisive factor. The Court said:

\*\*\*We hold that this trust agreement, which reserved a life income in the trust property to the settlor, was intended to take effect in possession or enjoyment after the settlor's death and that the Commissioner's decision was properly affirmed. The value of the trust property was properly included in the value of the estate.

No useful purpose will be served by discussing the various technical and legalistic arguments advanced by petitioners in view of the effect thereon of the Church case. Result affirmed.

Decision will be entered under Rule 50.

Served April 1, 1949.

Entered April 1, 1949.

[Seal T.C.U.S.]

court and Cause.]

TO WITHDRAW MEMORANDUM  
ON AND TO PERMIT FILING  
PETITIONERS' SUPPLEMENTARY

F

now the petitioners by their attorneys  
Crossman and Joseph D. Brady, Walter  
an and Lucien W. Shaw, and respect-  
est that the court enter the following

memorandum opinion herein entered  
1949, be withdrawn and that the peti-  
plementary brief to analyze the Church  
submitted herewith) be filed.

reasons therefor petitioners respectfully  
to the court as follows:

oners' Opening Brief was filed on or  
ary 10, 1949, within the time directed by  
t the trial of the case on November 29,

February 2, 1949 this Court granted a  
respondent for extension of time within  
e brief. Included in said motion as one  
unds therefor was the following state-

Supreme Court of the United States  
inions promulgated January 17, 1949,  
er of Internal Revenue v. Estate of  
Church, Deceased, Edward F. Black

Spiegel et al v. Commissioner of Internal Revenue  
decided questions which in all probability  
a material bearing on the decision in this  
ing and respondent desires to give the ap  
of the decisions in these cases careful con  
which consideration cannot be given in th  
maining before the due date of the brief.

3. Petitioners therefore assumed that t  
case would be considered in connection  
and that the appropriate time for peti  
present to the Court their views thereon  
in petitioners' reply brief to respondent's  
ferred to in said motion.

4. Respondent has never filed a brief b  
before petitioners were able to submit  
mentary brief to analyze the Church de  
memorandum opinion herein was receive

5. Petitioners respectfully submit that  
sion in the Church case has no applicati  
case. The reasons for this conclusion are  
forth in the supplementary brief acco  
this motion. The Court should have the  
petitioners' argument on this matter b  
decision is entered herein.

Wherefore, it is prayed that the forego  
be made by the court.

Dated: April 11, 1949.

/s/ JOSEPH D. BRADY,

/s/ WALTER L. NOSSAM

States Tax Court Stamp]: Denied April

/s/ ERNEST H. VAN FOSSAN,  
Judge.

and Filed April 13, 1949 T.C.U.S.

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court and Cause.]

FOR REVIEW BY THE COURT  
REPORT OF A DIVISION

Presiding Judge Of The Tax Court Of the  
States:

rs respectfully pray that the Presiding  
ise the discretion conferred on him by  
(b) I.R.C. and direct that the Memorandum  
entered in the above proceeding on  
49 be set aside and that the matter be  
the entire court.

issue, in this case is whether a trust  
January 29, 1932 is includible in gross  
Federal estate tax purposes. This issue  
ends upon whether the trust is taxable  
grantor reserved income of the trust  
l ending before his death.

tion for review is based upon the follow-  
s:

tioners, through no fault of their own,  
ed no opportunity whatsoever to present

basis for the Memorandum Opinion of the Court entered April 1, 1949.

(2) The Memorandum Opinion of the Court entered April 1, 1949 is erroneously based on the citation of the decision in the Church case (January 17, 1949; 93 Law Ed. Adv. 100) which case actually has no relationship to the present case.

#### 1. Petitioners Given no Opportunity to Present Arguments on Basis of Memorandum Opinion

In accordance with the order of the Court in the Church case, the petitioners' opening brief was filed on or about January 10, 1949.

Seven days later, on January 17th, the Court entered its decision in the Church case. Petitioners were aware that the Church decision might be thought to have some bearing on this case. On January 20th, a Motion for Extension of Time to File Brief was confirmed by respondent's Motion for Extension of Time to File Brief (granted by the Court on February 2, 1949). This Motion was based on the plea that the Church decision rendered would have some bearing on the present case.

Petitioners' counsel promptly analyzed the Church decision. They reached the conclusion that the decision was not applicable and had no bearing upon this case and could not be used as a precedent decision against the petitioners. They prepared a draft of language for a brief to demonstrate this point long before the decision was rendered. Division herein.



this argument on the Church case was in  
ef to respondent's brief. At the date of  
Division had ordered respondent to file a  
had ordered petitioners to file a reply  
seemed presumptuous for petitioners'  
file a further interim brief not directed  
rt when there was no need to do so. The  
reply brief was the proper occasion for  
s point.

rs received no brief of the respondent  
it was due and attempted, without suc-  
gh the Clerk of the Court to find out

rs were therefore astounded, shortly  
1, 1949, to receive the Memorandum  
the Division, deciding the case solely in  
the Church decision. The Church de-  
nothing to do with this case and peti-  
been ready, able and willing to demon-  
conclusion for over a month before the  
m Opinion was entered. The opportu-  
o was wholly denied to them through  
poration between the respondent (who  
knew it was unnecessary for him to file  
d the Division which entered this Mem-  
Opinion without giving petitioners the  
ortunity to be heard on this question.

rs therefore respectfully urge that they  
l the opportunity to be heard on the

guilty of no fault or negligence whatsoever merely because they adhered to the procedure of this Court instead of volunteering a brief on a question arising after their opening brief.

Since this issue involves a tax of over 100% plus interest, the petitioners feel that they have thus been deprived of a fair hearing on an important matter by this Court.

It is therefore respectfully requested that the Presiding Judge set aside this arbitrary Memorandum Opinion and have this case considered by the entire Court where petitioners' arguments can be the sole point relied upon in the Division's decision may be examined.

2. Church Case has no Application Here

The Memorandum Opinion of the Division entered April 1, 1949, relies solely upon the facts of the Church case. Neither the facts nor the decision in the Church case have any application herein.

The statute applicable to this case is Section 302(c), as amended by the Joint Resolution of March 3, 1931 (quoted in our opening brief on page 16 and in our supplementary brief on page 17).

As amended by the Joint Resolution of March 3, 1931, the statute provided for taxing a transfer of property thereafter if the decedent reserved the right to the income for life. Under this 1931 amendment the statute had been applicable which it was not

trust in the present case decedent re-  
himself the right to income to be "paid  
in other convenient installments as di-  
he trustor." (Exhibit 1-A, Article VII,  
page 26 of our opening brief.) The trust  
provided that the accrued and undistrib-  
e of the trust at decedent's death should  
d go to the beneficiary or beneficiaries  
the next eventual estate." (Exhibit 1-A,  
II, quoted on page 26 of our opening  
erscoring supplied.)

ention from the beginning of this case  
at this was not a trust with income re-  
life. It was a trust with income reserved  
period ending on the date of the last pay-  
installment of income prior to deced-  
, which is not a right to income for life.  
ad been a trust with income reserved for  
s unquestionably taxable under the ap-  
tute—the Joint Resolution of March 3,  
e is no question about this—there was no  
out it from the beginning of this case  
rior to January 17, 1949, the date of the  
the Church case.

rch case involved a trust created in 1924  
ne decedent reserved the net income of  
'during the term of his natural life.'  
nothing in the Church trust limiting the  
of income to any period ending before

Revenue Act of 1924) provided only for transfers "intended to take effect in enjoyment at or after his death." The Court, therefore, in the Church case, was holding that in this language the reservation of a full life estate made the trust taxable. If the Church trust had been created after the Joint Resolution of March 3, 1931, it would clearly have been taxable and there would have been no occasion to take the case to the Supreme Court of the United States.

The Church decision thus merely established that the law prior to March 3, 1931 to be the same as the law afterwards. It has been the same law since March 3, 1931, namely, that a trust with full life estate reserved to the settlor is taxable. We have never argued in this case that this was not the law after March 3, 1931.

What we have argued is that the Self-Settled Trust did not create a full life estate. The settlor herein did not retain the right to the income of the trust for life but for a period ending at his death. We have argued and still argue that this fact prevents the trust from being taxable under the old law of law which taxes only trusts where the settlor's income is reserved for life. The Church decision has nothing to this rule of law in our case, for it was a trust after March 3, 1931. Therefore, the Church decision stands wholly unaffected by the Church case, which merely extended back the rule applicable to trusts created after March 3, 1931.

The Congress in 1923 made a further

is here involved. (Section 302(c), as amended by the Revenue Act of 1932, effective January 1, 1932.) That this was the exact purpose of the trust is apparent from both House and Senate reports. (House of Representatives Report No. 108, 72d Congress, 1st Session; Senate Report No. 165, 72d Congress, 1st Session. See, C. B. Clark, *supra* note II, at pp. 490 and 532.) These Comments are quoted from in our opening brief, dated January 29, and in our supplementary brief, dated February 1, 1933. Therefore it is clear that such a trust could not have been created if created before June 6, 1932.

Nothing in the Church decision is to affect the facts of the facts in this case. The Church decision is based upon a different set of facts. None of the facts in the Church opinion deals with taxability of the decedent reserves a right to income from the trust ending before his death.

We therefore submit that the Memorandum Opinion is wholly in error in relying upon the Church decision as the basis for a decision herein. The Church decision has nothing to do with this situation. The decision herein can be based only upon a detailed analysis of the provisions of the trust and the law applicable thereto, as was done in our opening brief.

Reasons why the Church decision is not applicable herein appear more fully in our Supplementary Brief to Analyze Church Decision, filed January 29, 1933.

with the Court on April 13, 1949, which  
sion refused to consider.

It is therefore respectfully urged that  
orandum Opinion of the Division is in  
that this proceeding should be reviewed  
tire Court.

Dated: April 21, 1949.

/s/ JOSEPH D. BRADY,

/s/ WALTER L. NOSSAM

/s/ LUCIEN W. SHAW,

Attorneys for Petiti

[U.S. Tax Court Stamp]: Denied April

/s/ BOLON B. TURNER,

Presiding Judge.

Received and filed April 25, 1949 T.C.U

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[Title of Court and Cause.]

RESPONDENT'S COMPUTATION

ENTRY OF DECISION

The attached proposed computation is  
on behalf of the respondent, to The Tax  
the United States, in compliance with i  
determining the issues in this proceeding

This computation is submitted in accord  
the opinion of the Court, without prejud  
respondent's right to contest the correctn

ered herein by the Court, pursuant to  
in such cases made and provided.

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of In-  
ternal Revenue.

EBLETT,

ION COUNSEL.

ROUTER,

ONJES,

cial Attorneys, Bureau of  
nternal Revenue.

and filed May 3, 1949 T.C.U.S.

---

April 22, 1949.

### Recomputation Statement

state of Myron Selznick, Deceased  
ank of America National Trust and  
Savings Association  
David O. Selznick and Charles H. Sachs,  
Executors  
69 North Beverly Drive  
everly Hills, California

Docket No. 14985

March 23, 1944.

### Estate Tax Liability

Tax Assessed	Deficiency
\$294,099.92	\$199,842.44 (*)

ents shown in the attached schedules have been  
alance with the memorandum opinion of The Tax  
nited States, entered April 11, 1949, for decision



piration of 60 days after the decision of The Tax  
United States becomes final, the deficiency of \$199  
above will be reduced to \$136,822.66.

Estate of Myron Selznick

Date of Death: March 23, 1944

### Recomputation Statement

#### Schedule 1

#### Adjustments to Net Estate

For  
Basic Tax

Net estate as shown in statutory notice dated March 27, 1947.....	\$1,794,519.34
Net estate as adjusted.....	1,378,434.18

Adjustment (decrease) .....	\$ 416,085.75
-----------------------------	---------------

Reductions in value and increases  
in deductions:

(a) Stocks and bonds.....	
(b) Other miscellaneous property .....	
(c) Transfers .....	
(d) Debts of decedent.....	
(e) Taxes and administration expenses.....	

Total .....	
-------------	--

#### Schedule 2

#### Explanation of Adjustments

	Value deter- mined in statutory notice
(a) Stocks and Bonds:	
(1) Item 22 .....	\$ 39,958.34
(2) Item 25 .....	12,000.00
Total .....	\$ 51,958.34
Difference (decrease) .....	

## Schedule 2 (Continued)

on Selznick  
March 23, 1944

## Recomputation Statement

	Value deter- mined in statutory notice	Revised determination
ellaneous Property:		
.....	\$ 271,590.21	\$ 137,774.00
.....	9,594.77	5,890.72
.....	200,000.00	20,000.00
ettlement with		
s) .....	6,500.00	3,250.00
claim against		
nat) .....	21,886.36	None
.....	<u>\$ 509,571.34</u>	<u>\$ 166,914.72</u>
.....		342,656.62
during decedent's life:		
.....	\$ 283,769.62	\$ 283,769.62
.....	188,275.31	188,275.31
.....	<u>\$ 472,044.93</u>	<u>\$ 472,044.93</u>

— none

The Tax Court of the United States that "prop-  
erty to a trust under which the life estate in the in-  
terest to the donor is includible in the gross estate  
under section 811(c) Internal Revenue Code."

Allowance as shown  
in statutory notice as revised

Decedent:

.....	none	none
.....	none	\$20,681.00
.....	<u>none</u>	<u>\$20,681.00</u>
decrease) .....		\$20,681.00

Mildred Selznick against the decedent's estate in  
\$27,575.00 is allowable as a deduction for federal  
taxes in the amount of \$20,681.00.

Estate of Myron Selznick

Date of Death: March 23, 1944

## Recomputation Statement

(e) Federal and state income taxes and state property taxes and interest thereon accrued prior to the date of death, and administration expenses incurred by the estate, claimed in the estate tax return nor allowed in the estate tax return are properly deductible in an amount of \$33,589.79.

## Schedule 3

## Computation of Estate Tax

Net estate for basic tax, Schedule 1..

Net estate for additional tax,

Schedule 1 .....

Gross basic tax .....

Credit for estate and inheritance tax .....

Net basic tax .....

Total gross taxes (basic and

additional) .....\$ 493,942.36

Gross basic tax ..... 78,774.73

Gross additional tax .....

Total net basic and additional taxes

Estate tax assessed:

July 1945 list, Page 102, Line 3....

Deficiency .....

urt and Cause.]

## ION WITH RESPECT TO ENTRY DECISION UNDER RULE 50

by stipulated and agreed by the parties  
-entitled proceeding by their respective  
follows:

ax Court may enter its decision based  
ndent's computation for entry of de-  
a was filed with the Court on May 3,  
parties reserving, however, the right to  
correctness of such decision in the ap-  
ts as provided by statute.

event that evidence of payment of State  
taxes is filed before the expiration of  
er the decision of the Tax Court of the  
tes becomes final the deficiency of  
which is computed without reference to  
uch State inheritance taxes, shall be ap-  
reduced.

event that proceedings are had in the  
ourts, the deficiency above mentioned  
uced still further in such amount as will  
duction for legal fees and expenses in-  
uch appellate proceedings, no deduction  
ing been reflected in respondent's com-  
ed May 3, 1949.

spondent will, upon request, join peti-  
requesting the Court of Appeals for the

the Supreme Court of the United

out the provisions of paragraphs 2 and  
stipulation.

Dated: May 23, 1949.

/s/ JOSEPH D. BRADY,

/s/ LUCIEN W. SHAW,

Counsel for Petitioner

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal Revenue.

Internal Revenue.

Filed May 31, 1949 T.C.U.S.

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[Title of Court and Cause.]

### DECISION

Under written stipulation signed by  
the parties in the above-entitled proceeding  
filed with the Court on May 31, 1949, at  
Washington, D. C., it is

Ordered and Decided: That there is  
in estate tax of \$199,842.44.

[Seal] /s/ ERNEST H. VAN FOSTER,  
Judge.

Entered June 3, 1949.

Served June 3, 1949.

rt and Cause.]

## ORDER AND DECISION

to the Court's Memorandum Opinion  
l 1, 1949, the respondent filed a pro-  
tation of tax on May 3, 1949, and a  
lation signed by counsel for the parties  
filed on May 31, 1949, now, therefore,

nd Decided: That the decision entered  
ne 3, 1949, be and the same is hereby  
set aside, and it is further

nd Decided: That there is a deficiency  
of \$199,842.44.

/s/ C. R. ARUNDELL,  
Judge.

ne 7, 1949.

ne 8, 1949.

In the United States Court of Appeals  
For the Ninth Circuit

Tax Court Docket No. 14,985

ESTATE OF MYRON SELZNICK,  
BANK OF AMERICA NATIONAL  
AND SAVINGS ASSOCIATION  
O. SELZNICK and CHARLES F.  
Executors,

Petitioners on Petition  
vs.

COMMISSIONER OF INTERNAL REVENUE  
Respondent on Petition

### PETITION FOR REVIEW

To the Honorable Judges of the United States  
Court of Appeals for the Ninth Circuit

Now come Estate of Myron Selznick  
Bank of America National Trust and Savings  
Association, David O. Selznick and Charles F.  
Executors, by Joseph D. Brady, Walter  
man and Lucien W. Shaw, their attorneys,  
respectfully show:

#### I.

##### Nature of Controversy

Petitioners are executors of the Estate of  
Selznick who died a resident of Beverly Hills, California,  
on March 23, 1944.

On January 29, 1932, said decedent



avings Bank of Los Angeles as trustee  
accepted said trust.

y 29, 1932, said decedent transferred  
assets (other than life insurance con-  
g a value on the date of his death of  
Decedent also transferred to the trust  
insurance contracts owned by him. The  
e proceeds of said life insurance con-  
the date of decedent's death) allocable  
paid prior to January 10, 1941, was

decident in his 90-Day Letter determined  
ansfers to said trust by the decedent  
le in gross estate for Federal estate  
as transfers "intended to take effect  
or enjoyment at decedent's death"  
in the provisions of section 811 (c) of  
Revenue Code."

have denied that said transfers were  
ake effect in possession or enjoyment  
'death because all of decedent's rights  
other possession or enjoyment of the  
ended, under the terms of the trust,  
date of decedent's death. Therefore,  
rge, the transfers were not includible  
e under section 302(c) of the Revenue  
s amended by the Joint Resolution of  
1 (Public Number 131, 71st Congress),  
e law applicable to these transfers, nor

Petitioners have also asserted that said transfers are not includible in gross estate under the provision of the Internal Revenue Code. The respondent did not deny before the Tax Court that the transfers were made to the United States.

The Tax Court upheld the determination of the respondent that said transfers were includible in gross estate. In doing so it relied solely on the decision of the Supreme Court in *Commissioner v. Estate of Francois L. Church, Deceased* (354 U.S. 17, 1949), although that case involved a transfer which the decedent had reserved a right to income for life ending only at the moment of his death, whereas in this case, under the trust, the decedent's right to income ended before his death. The Tax Court gave the petitioners no opportunity to be heard on the application of the Church case to this case. That case was decided after petitioners had filed their opening brief, and the Court entered its decision without waiting for a brief from the respondent, thus permitting the petitioners to file the closing brief in which the Church case would have been discussed.)

The Tax Court erred:

1. In holding and deciding that transfers made by the decedent to said trust of \$152,951.83 (with respect to assets other than life insurance contracts) and \$148,805.10 (with respect to life insurance contracts) were includible in the decedent's gross estate for Federal estate tax purposes.

Federal estate tax based on including  
s in gross estate.

dering an opinion and decision which,  
cts above enumerated, are contrary to  
ng law and regulations and are not  
y any evidence in the case.

## II.

of Court in Which Review Is Sought  
s hereby declare that they seek a re-  
cision of the Tax Court of the United  
e United States Court of Appeals for  
rcuit.

## III.

to Establish Venue and Jurisdiction  
znick, the decedent herein, died a resi-  
erly Hills, California, on March 23,  
state is being administered under the  
State of California. The petitioners  
of America National Trust and Sav-  
tion, a national banking association,  
znick, and Charles H. Sachs, are the  
ed and acting executors of the last will  
nt of Myron Selznick. This case in-  
ederal estate tax liability of petitioners  
of said estate.

the United States Court of Appeals  
a Circuit is established by the fact that

les, which collection district is within the jurisdiction of the Court of Appeals for the Ninth Circuit, and by the fact that the parties here stipulated that the decision by the Tax Court shall not be reviewed by any Court of Appeals other than the one herein designated.

The amount of the deficiency in estate tax was determined by the Tax Court (prior to the allowance of any credit for State inheritance tax) to be \$842.44. Said deficiency represents the amount of tax payable as a result of inclusion in gross estate of (a) certain amounts to which the parties stipulated in a stipulation dated and filed with the Tax Court on November 29, 1948, and which are not in controversy, and (b) the transfers to the trust on January 29, 1932, made by decedent and his wife. As to under heading I above, the inclusion of the transfers in the gross estate represents the matter in controversy on this appeal.

The proceedings upon which the deficiency was determined by the Tax Court determining said deficiency were as follows: On April 1, 1949, the Tax Court promulgated its Memorandum Opinion (No. 10,000 Van Fossan), holding that said transfers to the trust, described under heading I above, were includible in gross estate. Thereafter, by stipulation of fact that they had had no opportunity to litigate the nonapplicability of the Church decision to the transfers to in heading I above, the petitioners filed a motion with the Tax Court (1) on April 12, 1949, for a Memo-

by the Tax Court on April 14, 1949, and  
April 25, 1949, a Motion for Review by the  
Report of a Division, which motion was  
the Tax Court on April 27, 1949.

April 7, 1949, pursuant to its Memorandum  
the Tax Court entered its Order and De-  
there is a deficiency in estate tax of  
This petition for review is for a re-  
decision by the Tax Court holding that  
the trust made by the decedent on Jan-  
32, in the total amounts of \$152,951.83  
5.10 respectively are to be included in  
and is filed pursuant to the provisions  
1141 and 1142 of the Internal Revenue

the, Petitioners pray that the decision of  
Court of the United States be reviewed by  
States Court of Appeals for the Ninth  
that a transcript of the record be prepared  
in accordance with the law and the rules of said  
Court and be transmitted to the Clerk of said Court  
and that appropriate action be taken to  
that the errors herein complained of may  
be and corrected by said Court.

April 26, 1949.

/s/ JOSEPH D. BRADY,  
/s/ WALTER L. NOSSAMAN,  
/s/ LUCIEN W. SHAW,

Counsel for Petitioners on

Docket No. 14,985

ESTATE OF MYRON SELZNICK,  
BANK OF AMERICA NATIONAL  
AND SAVINGS ASSOCIATION  
O. SELZNICK and CHARLES F.  
Executors,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE  
Respondent.

PETITIONERS' DESIGNATION  
CONTENTS OF RECORD ON REVIEW

To the Clerk of the Tax Court of the  
United States:

The above-designated petitioners, being  
petitioners on review, hereby designate  
for review in the record for consideration by the  
United States Court of Appeals for the Ninth Circuit  
the review of the decision of the Tax Court of the  
United States entered in said proceedings on July  
7, 1949, the entire record as follows:

1. The docket entries of all proceedings before  
the Tax Court.
2. Pleadings before the Tax Court, including  
(a) Petition, including annexed exhibits  
(being a copy of deficiency letter and statement of

tion between the parties dated Novem-  
and filed with the Tax Court upon said

ts to the stipulation referred to in para-  
follows:

bit 1-A—Declaration of Trust. Three  
pies of said Exhibit are filed herewith;  
number thereof may be compared and  
included in the record.

bits 2-B, 3-C, 4-D, 5-E, 6-F, 7-G, 8-H,  
J—insurance policies. Copies of said  
y be included in the record, except that,  
ed States Court of Appeals for the  
it orders and directs the transmission  
al exhibits on file with the Clerk of the  
o said Court of Appeals in their orig-  
or the inspection of that Court, the  
a of such original exhibits shall be made  
pying the same into the record.

bit 11-K—Statement of Payments of  
to Myron Selznick from Trust Number  
by Citizens National Trust and Savings  
s Angeles as Trustee. Three duplicate  
aid Exhibit are filed herewith; the  
ber thereof may be compared and certi-  
luded in the record.

Memorandum Opinion of the Tax Court  
il 1, 1949.

a to Withdraw Memorandum Opinion



1949, and order denying said motion, dated April 14, 1949.

7. Motion for Review by the Court of Appeals for the Ninth Circuit, filed April 25, 1949, and order denying said motion dated April 27, 1949.

8. Respondent's Computation for Entry of Decision filed May 3, 1949.

9. Stipulation with respect to Entry of Decision Under Rule 50 filed May 31, 1949.

10. Decision entered June 3, 1949.

11. Order and Decision entered June 3, 1949.

12. Petition for Review by the United States Supreme Court of Appeals for the Ninth Circuit.

13. Notice of Filing Petition for Review, together with proof of service thereof and a copy of the Petition for Review.

14. This Designation of Contents of Petition for Review.

Request is hereby made that a transcript of the record be prepared, certified and transmitted to the Clerk of the Tax Court of the United States and the Clerk of the United States Court of Appeals for the Ninth Circuit as required by law and the rules of said Circuit Court of Appeals.

Dated: July 26, 1949.

/s/ JOSEPH D. BRADY,

/s/ WALTER L. NOSSAM

/s/ LUCIEN W. SHAW,

Counsel for Petitioner

service of a copy of the foregoing Des-  
hereby acknowledged as having been  
st day of August, 1949.

GEORGE J. SCHOENEMAN,  
Commissioner of Internal  
Revenue, Respondent.

/s/ CHARLES OLIPHANT,  
Chief Counsel for the Bureau  
of Internal Revenue.

29, 1949 T.C.U.S.

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United States Court of Appeals  
For the Ninth Circuit

Tax Court Docket No. 14,985

OF MYRON SELZNICK, Deceased,  
OF AMERICA NATIONAL TRUST  
SAVINGS ASSOCIATION, DAVID  
SELZNICK and CHARLES H. SACHS,  
rs,

Petitioners on Review,

vs.

ONER OF INTERNAL REVENUE,  
Respondent on Review.

FOR TRANSMISSION OF ORIG-  
EXHIBITS ON FILE WITH THE

of the United States Court of Appeals for the Ninth Circuit, and to the other Judges of said Court:

The above-designated petitioners on review are petitioners in a proceeding before the Tax Court of the United States, bearing docket number 10,490, in which proceeding the Tax Court rendered its decision on June 7, 1949, that there is a deficiency in federal estate tax owing by said petitioners in the amount of \$199,842.44. Petitioners have filed their petition for a review of said decision in this Court, and have filed their designation of the contents of the record on review. In said designation it is requested that there be included in said record the complete record of all the proceedings before the Tax Court of the United States in this case, with copies of exhibits, except that if the Tax Court of Appeals for the Ninth Circuit directs the transmission of certain of said exhibits, namely, Exhibits 2-B, 3-C, 4-D, 5-E, 6-F, 7-G, 8-H, 9-I and 10-J, which are photostatic copies of insurance contracts, for the inspection of the Tax Court of Appeals, said exhibits may be omitted from the transcript prepared by the Clerk of the Tax Court and transmitted in original form.

The exhibits referred to are photostatic copies of insurance contracts which it would be impracticable to attempt to copy in a form which would be intelligible to this Court.

this Court the original exhibits numbered 3-C, 4-D, 5-E, 6-F, 7-G, 8-H, 9-I and e with the Clerk of the Tax Court in said bearing docket number 14,985, in the d Court, said original exhibits to be in oying the same into the transcript pre- e Clerk of the Tax Court of the record herein.

July 29, 1949.

/s/ JOSEPH D. BRADY,

/s/ WALTER L. NOSSAMAN,

/s/ LUCIEN W. SHAW,

Counsel for Petitioners on  
Review.

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court of Appeals and Cause.]

# DIRECTING TRANSMISSION OF FINAL EXHIBITS ON FILE WITH TAX COURT

re-designated petitioners on review have their petition for a review of the decision Court of the United States in a proceeding said Tax Court bearing docket number ch decision was entered by said Court on 49. Said petitioners have also duly filed nation of the contents of the record on

with the Tax Court in lieu of transcribing  
hibits into the record on review.

Accordingly, It Is Hereby Ordered that  
of the Tax Court of the United States be  
hereby, directed to furnish the United St  
of Appeals for the Ninth Circuit the o  
hibits numbered 2-B, 3-C, 4-D, 5-E, 6-F,  
9-I and 10-J, on file with the Clerk o  
Court in said action, bearing docket num  
in the files of said Court, said original  
be furnished in lieu of copying the sam  
transcript prepared by the Clerk of the  
of the record on review herein.

Dated: August 2, 1949.

WILLIAM DENMAN,  
Chief Judge of the United States Court o  
for the Ninth Circuit.

HOMER T. BONE,  
WILLIAM E. ORR.

A true copy.

Attest. August 3, 1949.

PAUL P. O'BRIEN,  
Clerk.

[Seal] By /s/ F. SCHMID,  
Deputy.

[Endorsed]: Filed August 2, 1949 U.

[Endorsed]: Received and filed Aug  
T.C.U.S.

The Tax Court of the United States  
Washington

Docket No. 14,985

OF MYRON SELZNICK, Deceased,  
K OF AMERICA NATIONAL TRUST  
SAVINGS ASSOCIATION, DAVID  
ELZNICK and CHARLES H. SACHS,  
titors,

Petitioners,

vs.

SIONER OF INTERNAL REVENUE,  
Respondent.

CERTIFICATE

r S. Mersch, Clerk of The Tax Court  
ited States do hereby certify that the  
documents, 1 to 15 inclusive, constitute  
l of the original papers and proceedings  
ny office as called for by the "Designation  
ents of Record of Review" in the pro-  
fore The Tax Court of the United States  
Estate of Myron Selznick, Deceased, Bank  
a National Trust and Savings Associa-  
d O. Selznick and Charles H. Sachs,  
Petitioners, v. Commissioner of Internal  
Respondent," Docket Number 14985 and  
ne petitioners in The Tax Court proceed-  
tiated an appeal as above numbered and

appear in the official docket book in my

In testimony whereof, I hereunto set  
and affix the seal of The Tax Court of the  
States, at Washington, in the District of  
this 18th day of August, 1949.

[Seal]      /s/ VICTOR S. MERSCH,  
Clerk, The Tax Court of the  
United States.

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[Endorsed]: No. 12335. United States  
Appeals for the Ninth Circuit. Estate  
Selznick, Deceased, Bank of America  
Trust and Savings Association, David O.  
and Charles H. Sachs, Executors, Petition  
Commissioner of Internal Revenue, Respondent.  
Transcript of the Record. Upon Petition  
a Decision of The Tax Court of the United States.

Filed August 22, 1949.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.



United States Court of Appeals,

For the Ninth Circuit

No. 12335

OF MYRON SELZNICK, Deceased,  
OF AMERICA NATIONAL TRUST  
SAVINGS ASSOCIATION, DAVID  
SELZNICK and CHARLES H. SACHS,  
ors,

Petitioners on Review,

vs.

IONER OF INTERNAL REVENUE,  
Respondent on Review.

Tax Court Docket No. 14,985

ITIONERS' DESIGNATION OF  
ENTS OF RECORD ON REVIEW

rk of the above-entitled Court, and to  
. Theron L. Caudle, Assistant Attorney  
l, and Charles Oliphant, Chief Counsel,  
u of Internal Revenue, Counsel for Re-  
nt on Review:

tioners above, by their attorneys, hereby  
for inclusion in the transcript of record  
w the entire record before The Tax Court  
ited States as transmitted to the Clerk  
urt by the Clerk of the Tax Court, as

Docket Entries .....	
Petition .....	
Answer .....	
Stipulation .....	
Exhibits 1-A and 11-K.....	
(For Exhibits 2-B through 10-J, see H	
B., below)	
Memorandum Opinion .....	
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Motion for Review by the Court of Rep	
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Respondent's Computation for Entry of D	
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Under Rule 50.....	
Decision .....	
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Petition for Review and Proof of Service	
Petitioners' Designation of Contents of I	
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Court Order re Original Exhibits.....	
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Motion for Consideration of Original Exh	
Order for Consideration of Original Exh	

ation of Contents of Record on

..... —  
s to be considered by the Court in Origin-  
n, if ordered by the Court:

d by this Court of Appeals pursuant  
nd Order filed herewith, Exhibits 2-B,  
E, 6-F, 7-G, 8-H, 9-I, and 10-J, which  
f Document Number 5 as filed with the  
s Court by the Clerk of the Tax Court,  
sidered by this Court in their original  
ugh set out in the printed record. If  
oes not order the consideration of said  
their original form, then they shall be  
the printed record by the Clerk herein.

August 27, 1949.

/s/ JOSEPH D. BRADY,  
/s/ WALTER L. NOSSAMAN,  
/s/ LUCIEN W. SHAW,

Counsel for Petitioners  
on Review.

—  
ourt of Appeals and Cause.]

DAVIT OF SERVICE BY MAIL

lifornia,

Los Angeles—ss.

L. Haroff, being first duly sworn, de-  
ays: That this affiant is a citizen of the

a party to the within and above entitled action.  
this affiant is making this service for  
Brady, Walter L. Nossaman and Lucien  
who are the attorneys for the Petitioners  
action.

That on the 29th day of August, 1949,  
served the within Petitioners' Designation  
tents of Record on Review on the Respondent  
this action by placing a true copy thereof in an  
envelope addressed to one of the attorneys  
for said Respondent at the business address of said  
attorney, as follows: Theron L. Caudle,  
Assistant Attorney General, Department of Justice,  
Washington 25, D. C., by then sealing said envelope  
and depositing the same, with postage thereon  
prepaid, in the United States Post Office at  
Los Angeles, California.

That there is delivery service by United States  
mail at the place so addressed or there is no  
communication by mail between the place so addressed  
and the place so addressed.

/s/ VIRGINIA L. HAROLD

Subscribed and sworn to before me this 29th day  
of August, 1949.

[Seal] /s/ JULIA M. FITZSIMMONS  
Notary Public, in and for the County of Los Angeles,  
State of California.

My commission expires February 17, 1950.

[Endorsed]: Filed Aug. 30, 1949.

court of Appeals and Cause.]

## POINT OF POINTS ON WHICH PETITIONERS INTEND TO RELY ON REVIEW

petitioners hereby designate the following as the points on which they intend to rely in the review of the proceeding by the United States Court of Appeals for the Ninth Circuit:

1. The Tax Court of the United States erred in its holding that transfers of decedent to a trust created on January 29, 1932, totaling \$301,756.93, were includible in the decedent's gross estate for estate tax purposes, in reliance solely upon the holding of the Supreme Court in the case of *Estate of Church v. Commissioner*, 305 U. S. 632, 69 S.Ct. 322, without giving petitioners any opportunity to argue the effect of the holding herein.

2. The Tax Court erred in holding that decedent did not retain for his life, or for a term not ending before his death, the possession or enjoyment of, or the income from, the trust corpus thus erroneously included in decedent's gross estate as determined by the Tax Court. (Sec. 302(c)(1) of the Internal Revenue Act of 1926, as amended by the Joint Resolution of March 3, 1931.)

3. The Tax Court erred in holding that decedent did not retain for his life or for a term not ending before his death the right to the possession or enjoyment of, or the income from, the trust corpus thus erroneously included in gross estate as determined by the Tax Court, or the income therefrom.

4. With respect to none of the property erroneously included in decedent's gross estate, the Tax Court, was the enjoyment thereof at the date of decedent's death subject to a trust created through the exercise of a power either by decedent alone, or in conjunction with another person, to alter, amend or revoke. (Sec. 302(d)(2) of the Internal Revenue Act of 1926.)

5. With respect to life insurance contracts which were a part of the property erroneously included in the decedent's gross estate by the Tax Court, at any time after January 10, 1941, did the decedent possess any incident of ownership therein. (g), Internal Revenue Code.)

6. The Tax Court erred in holding that there was any deficiency in Federal income tax based on including in gross estate said trust property of decedent of property to said trust.

7. The Tax Court erred in rendering its opinion and decision which, in the respects above stated, are contrary to the controlling law and authorities, and are not supported by any evidence in the case.

Dated: August 27, 1949.

/s/ JOSEPH D. BRADY

/s/ WALTER L. NOSSA

/s/ LUCIEN W. SHAW,

Counsel for Petitioner

on Review.

urt of Appeals and Cause.]

## DAVIT OF SERVICE BY MAIL

California,

Los Angeles—ss.

L. Haroff, being first duly sworn, de-  
clares: That this affiant is a citizen of the  
United States of America, a resident of the County  
of Los Angeles, over the age of eighteen years, not  
a party to the within and above entitled action;  
that the affiant is making this service for Joseph  
Walter L. Nossaman and Lucien W.  
Nossaman are the attorneys for the Petitioners in

that on the 29th day of August, 1949, affiant  
has read the within Statement of Points on Which  
the Respondent Intend to Rely on Review on the re-  
sult of this action by placing a true copy  
of the same in an envelope addressed to one of the  
attorneys for record for said Respondent at the  
address of said attorney, as follows:  
Caudle, Esq., Assistant Attorney Gen-  
eral, Department of Justice, Washington 25, D. C.,  
and mailing said envelope and depositing the  
same with postage thereon fully prepaid, in the  
United States Post Office at Los Angeles, Cali-

for there is delivery service by United States  
Mail at place so addressed or there is a regular



communication by mail between the place  
ing and the place so addressed.

/s/ VIRGINIA L. HARO

Subscribed and sworn to before me the  
of August, 1949.

[Seal] /s/ JULIA M. FITZSIMM  
Notary Public, in and for the County of  
geles, State of California.

My commission expires February 17,

[Endorsed]: Filed Aug. 30, 1949.

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[Title of Court of Appeals and Cause.]

MOTION FOR CONSIDERATION  
ORIGINAL EXHIBITS

On August 2, 1949, the Honorable William  
man, Chief Judge of the United States  
Appeals for the Ninth Circuit, and the  
Homer T. Bone and the Honorable William  
Judges of said Court, made an order directing  
the Clerk of the Tax Court of the United States  
furnish to this Court original exhibits Nos. 14,985  
through 10-J, on file with the Clerk of the Tax  
Court in this proceeding, bearing Docket No. 14,985  
in the files of said Court, said exhibits to be  
furnished in lieu of copying the transcript prepared  
by the Clerk of the Tax Court of the record on review herein.

bits transmitted in their original form  
tic copies of insurance contracts, which  
npractical to attempt to reproduce in  
a form which would be intelligible to

s on review therefore respectfully re-  
is Court make its order that each of the  
hibits transmitted in original form, be-  
s 2-B through 10-J, be omitted from the  
rd herein and instead be considered by  
n connection with this review in their  
n as though set out in the printed rec-  
id review.

August 27, 1949.

/s/ JOSEPH D. BRADY

/s/ WALTER L. NOSSAMAN

/s/ LUCIEN W. SHAW

Counsel for Petitioners  
on Review.

---

court of Appeals and Cause.]

FOR CONSIDERATION OF  
ORIGINAL EXHIBITS

e-designated petitioners on review have  
their motion for consideration in their  
m of certain exhibits heretofore trans-  
is Court by the Clerk of the Tax Court  
ed States and good cause therefor an-

It Is Hereby Ordered that Exhibits 4-D, 5-E, 6-F, 7-G, 8-H, 9-I, and 10-J, transmitted to this Court in their original form now in the files of the above-entitled proceeding on review in this Court, shall be omitted from the printed record on review herein; and omitted exhibits shall be considered by the Court in connection with this review in their original form as though set out in said printed record.

Dated: August 30, 1949.

/s/ WILLIAM DENMAN

/s/ WILLIAM HEALY,

/s/ HOMER T. BONE

Judges U. S. Court

for the Ninth Circuit

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[Title of Court of Appeals and Cause.]

### AFFIDAVIT OF SERVICE BY MAIL

State of California,

County of Los Angeles—ss.

Virginia L. Haroff, being first duly sworn, deposes and says: That this affiant is a citizen of the United States of America, a resident of Los Angeles, over the age of eighteen years, and a party to the within and above entitled action; that this affiant is making this service for Brady, Walter L. Nossaman and Lucien

he 29th day of August, 1949, affiant  
within Motion for Consideration of  
hibits on the Respondent in this action  
true copy thereof in an envelope ad-  
ne of the attorneys of record for said  
at the business address of said attorney,  
Theron L. Caudle, Esq., Assistant At-  
ral, Department of Justice, Washington  
then sealing said envelope and deposit-  
e, with postage thereon fully prepaid,  
ed States Post Office at Los Angeles,

e is delivery service by United States  
place so addressed or there is a regular  
on by mail between the place of mailing  
e so addressed.

/s/ VIRGINIA L. HAROFF

and sworn to before me this 29th day  
1949.

/s/ JULIA M. FITZSIMMONS

ic, in and for the County of Los An-  
ate of California.

ssion expires February 17, 1952.

]: Filed Sept. 1, 1949.



United States Court of Appeals  
for the Ninth Circuit  
No. 12335

OF MYRON SELZNICK, Deceased,

,

vs.

SIONER OF INTERNAL REVENUE.

MANDATE

ates of America—ss.

resident of the United States of America

onorable the Judges of the Tax Court of  
United States.

s, lately in the Tax Court of the United  
fore you or some of you, in a cause be-  
tate of Myron Selznick, Deceased; Bank  
ca National Trust and Savings Associa-  
id O. Selznick, Charles H. Sachs, Execu-  
tioners, and Commissioner of Internal  
respondent, Docket No. 14985, a Decision  
entered on the 3rd day of June, 1949,  
d Decision is of record and fully set out  
use in the office of the clerk of the said Tax  
the United States, to which record refer-  
ereby made and the same is hereby ex-  
ade a part hereof:

petitioned to this court as by the inspection of the transcript of the record of the said Tax Court. The said cause was brought into the United States Court of Appeals for the Ninth Circuit by virtue of the said writ, agreeably to the Act of Congress, in which the said writ was made and provided, fully and at large as above.

And Whereas, on the 28th day of December, 1949, of the year of our Lord, one thousand nine hundred and forty-nine, the said cause came on to be heard before the said United States Court of Appeals for the Ninth Circuit, on the said transcript of the record, and on stipulation of counsel for respectively the said Tax Court and the said appellant, that the decision of the Tax Court should be affirmed, and the cause remanded to the Tax Court for its further consideration.

On Consideration Whereof, It is now heard, considered, and adjudged by this Court that the decision of the said Tax Court of the United States in the said cause be, and hereby is vacated, and that this cause be, and hereby is remanded to the Tax Court of the United States for further consideration in view of the amendments of October 25, 1949, to the said Internal Revenue Code (Section 811 (c) and also subdivisions (d) and (e) of the said Internal Revenue Code (December 28, 1949).

You, Therefore, Are Hereby Commanded to cause such proceedings be had in said cause, in conformity with the judgment of this court, as according to right and justice, and the laws of the United States ought to be had, the said petition for re-



the Honorable Fred M. Vinson, Chief  
of the United States, the twenty-eighth day  
ber, in the year of our Lord one thousand  
dred and forty-nine.

/s/ PAUL P. O'BRIEN,  
United States Court of Appeals for the  
a Circuit.

d and filed T.C.U.S. January 4, 1950.

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the Tax Court of the United States  
Docket No. 14985

OF MYRON SELZNICK, Deceased;  
K OF AMERICA NATIONAL TRUST  
SAVINGS ASSOCIATION, DAVID O.  
ZNICK AND CHARLES H. SACHS,  
itors,

Petitioners,

vs.

SIONER OF INTERNAL REVENUE,  
Respondent.

Promulgated November 28, 1950

ON AND SUPPLEMENTAL OPINION

cedent created an irrevocable trust on Jan-  
1932, to which and prior to June 7, 1932,  
ferred insurance contracts and bonds. The

accrued at the decedent's death be paid to trust beneficiary. Under the terms of the decedent could cancel the insurance policy, the proceeds thereof would become part of the corpus, the investment of which he could receive the income from. At the decedent's death there were \$1,138.36 of accrued trust income which the trustee had not distributed to the decedent. The decedent died in 1944. Section 811 (b) of the Code and makes it applicable to decedents dying after February 10, 1939. Section 811 (b) of the 1949 Act further provides that property transferred after March 3, 1931, and June 7, 1932, will not be included in the gross estate unless it would have been includible by the amendatory language of the Joint Resolution of March 3, 1931 (46 Stat. 1516).

1. Held, the non-insurance assets transferred to the trust prior to June 7, 1932, are not includible in the decedent's gross estate by reason of the amendatory language of the Joint Resolution of March 3, 1931, and section 811 (c) of the Code.

2. Held, further, the insurance proceeds are not includible in the decedent's gross estate by reason of section 811 (g) of the Code.

LUCIEN W. SHAW, ESQ.,  
For the Petitioners.

an, Judge:

respondent determined a deficiency of \$384,- the estate tax liability of the Estate of Selznick, deceased. On June 23, 1947, the Service of the Estate of Myron Selznick petitioned the Tax Court for a redetermination of the deficiency.

The parties came to agreement and stipulation many of the issues from which part of the deficiency arose. On April 1, 1948, a Memorandum Opinion of this Court was issued which sustained the respondent's inclusion of the decedent's gross estate under section 811 (c), Internal Revenue Code, of certain property transferred by the decedent in trust. That Memorandum Opinion was affirmed on the recent decision in the case of *Commissioner v. Estate of Church*, 335 U.S. 651. On June 13, 1949, a decision of the Tax Court was issued which held that there was a deficiency in estate tax of \$2,444. The petitioner appealed from that decision to the Court of Appeals for the Ninth Circuit, which remanded the proceedings to this Court. The nature of the cause under mandate is set forth herein, in part, as follows:

\* On stipulation of counsel for respective parties, it is ordered that the decision of the Tax Court be vacated and the cause remanded to the Tax Court for further consideration:

Consideration Whereof, It is now here

States in this cause be, and hereby is  
and that this cause be, and hereby is  
to the Tax Court of the United States  
for consideration in the light of the  
amendments of October 25, 1949, to Section  
and also subdivisions (d) and (g) of  
Internal Revenue Code.

The amendments to the Code enact certain  
active statutory changes in the law as amended  
Commissioner v. Estate of Church, supra,  
in our Memorandum Opinion vacated by  
the Court of Appeals for the Ninth Circuit.

The factual record we have before us is  
as in the prior proceedings and consists of  
pleadings and a stipulation of facts with  
attached. The facts as stipulated are so far  
insofar as they are pertinent to the issues  
being, are set forth below.

The parties have submitted additional  
which the argument is directed toward  
now before us, viz:

Whether any part of the assets transferred  
by the decedent to a trust created by him on  
September 29, 1932, should be included in the decedent's  
estate under section 811 (c) or (d) or (e) of the  
Code, as amended by P.L. 378, 81st Cong.

### Findings of Fact

The petitioners are the duly appointed and  
authorized executors of the last will and testament of

the estate tax return of the decedent was  
the collector of internal revenue for the  
district of California on June 22, 1945.

On January 29, 1932, the decedent created a trust  
the Citizens National Trust and Savings  
Company of Los Angeles as trustee.

II of the trust agreement reads as follows:

The Trustor agrees that as to the insurance  
policies delivered to the Trustee or which may  
hereafter be delivered to it:

Because each and every policy intended to  
be made subject to this agreement and the  
provisions hereunder to be made payable to the  
Trustee by sufficient designation as beneficiary  
thereof, or in such other manner as the parties  
to the agreement and any insurer shall agree, and the  
Trustee assumes no responsibility for the suffi-  
ciency or effect of any instrument or agreement  
under which any policy shall be made payable to it.

III of the trust agreement provides, in

During the lifetime of the Trustor, Myron  
Black, no sale or exchange of property which  
at any time comprise the principal of the  
trust estate, and no change in the investments  
of the principal of the trust estate, shall be  
made by the Trustee except on the written  
consent and direction of said Trustor or his duly  
authorized agent, .....,  
which Trustor has designated as his

designated from time to time, the direct, in writing, said Trustee as to investment of all cash principal, in any and/or property whether or not the be approved and permissible by law investment of trust funds under the laws of of California. \* \* \* The Trustor reserves the right by written instrument with the Trustee, to revoke said appointment of David O. Selznick and/or Loyd W. to substitute other persons to act in lieu of David O. Selznick and/or Loyd in the capacities herein in this paragraph provided for them to act.

Article VI of the trust agreement provides in part:

\* \* \* [The trustees] shall, after cash or other securities have been deposited in this trust so that the income therefrom is sufficient, (until such time the Trustor shall elect to pay said premiums himself), also pay and all premiums on life insurance policies and/or contracts which may be transferred and/or delivered by the Trustor to the Trust pursuant to the terms hereof, \* \* \*

Article VII of the trust agreement reads in part as follows:

This Trust is irrevocable. The income received and derived from

by said Trustee paid monthly or in convenient installments as directed by Trustor to Myron Selznick for and during lifetime; the said Myron Selznick, however, reserves the right to direct the Trustee from time to time to credit, keep and add any and all income which, pursuant to the terms hereof, is payable to him, to the principal of the assets of the trust estate, by giving written instructions from time to time so demanding.

VIII of the trust agreement reads, in full as follows:

From and after the death of the said Myron Selznick, the entire net income received or derived from the trust estate and available for distribution hereunder shall go and be paid by said Trustee in equal monthly installments, as follows: [There follows various provisions for distribution of the trust income to the deceased's widow, daughter, parents, brothers and children and a final provision for termination of the trust and distribution of the assets and for remainder to charity on the death of any of the heirs surviving.]

VIII further provides that:

Trustor reserves the right to change or substitute, from time to time, the said charitable institutions, by giving notice of such change or substitution to the Trustee in writing.



Notwithstanding the fact that this  
tion of Trust is irrevocable, the Tr  
himself and on behalf of the benefi  
serves the right to petition any cour  
petent jurisdiction at any time and  
to time to amend and/or construe t  
provided, however, that no amendm  
change the provisions of this trust w  
have the effect or which is intended t  
cause the same to be construed to be  
it to be a revocable trust rather than  
vocable one.

The Trustor reserves the absolute  
cancel or cause to be cancelled, and  
cause to be revoked, any of the insur  
cies herein referred to, or which may  
be added to this Trust, provided tha  
obtain the written consent of any tw  
following, to wit: The Trustee, David  
nick and Loyd Wright; provided fur  
upon any cancellation any cash surre  
ues received on any such policies, sha  
in and/or be added to the corpus of th

Article XIII of the trust agreement  
follows:

Any income accrued or undistribut  
termination of any trust or estate h  
shall belong and go to the beneficiary



ed, however, that it is an express condition of the trust herein created, which shall have precedence over any and all other provisions herein relative to the distribution of the trust estate, that the Trustee is authorized and empowered and may in its sole and absolute discretion, although it is not obligated so to do, to pay out of the net income and/or principal of the trust estate and in such manner as to it may seem equitable and just, pay a reasonable sum toward defraying either in whole or in part the expenses of the last illness and of the funeral of the Trustor and/or any specifically named or contingent beneficiary or beneficiaries of the said Trust.

Decedent transferred assets to said trust as

February 29, 1932, decedent transferred to the trust assets (other than life insurance contracts) having a value on the date of decedent's death of \$28.81. After June 6, 1932, decedent transferred to said trust, assets (other than life insurance contracts) having a value on the date of decedent's death of \$130,817.79, which amount it is agreed, in any event, is properly includable in decedent's gross estate (and which is \$28.81 more than the amount reported on decedent's estate tax return on account of said assets). It is also assigned to the trust, prior to June 6, 1932, life insurance contracts owned by him, as

Number	Insurance Company
4,330,590	Mutual Life Insurance Company.....
10,484,859	New York Life Insurance Company.....
10,484,860	New York Life Insurance Company.....
10,541,918	New York Life Insurance Company.....
62,036	Peoples Life Insurance Company.....
63,287	Peoples Life Insurance Company.....
108,328-R	Indianapolis Life Insurance Co.....
102,324	Indianapolis Life Insurance Co.....
109,395	Indianapolis Life Insurance Co.....

The total proceeds of the life insurance as of the date of decedent's death, were \$3 of which the portion allocable to premi prior to January 10, 1941, was \$148,805.10 portion allocable to premiums paid after was \$39,470.21, which latter sum, it is and agreed, is in any event, includible in gross estate (and which represents \$62.63 the amount reported in the estate tax account of said insurance).

As set forth in the declaration of trust income of the trust was to be paid to My nick. The trustee paid various amounts to dent from time to time as follows:

Date	Amount of
July 1, 1932 .....	\$ 4
January 11, 1933 .....	1,5
April 10, 1933 .....	1,6
September 2, 1933 .....	8

6, 1934 .....	\$2,410.62
st 16, 1934 .....	1,422.41
nber 5, 1934 .....	1,334.95
nber 2, 1934 .....	1,262.59
nber 2, 1934 .....	459.22
ary 1, 1935 .....	2,448.77
4, 1935 .....	716.00
2, 1935 .....	1,879.53
t 7, 1935 .....	2,376.99
nber 4, 1935 .....	544.65
nber 4, 1935 .....	436.68
nber 4, 1935 .....	1,571.99
ry 4, 1936 .....	23.98
ary 4, 1936 .....	714.90
2, 1936 .....	480.00
2, 1936 .....	100.00
3, 1936 .....	1,357.59
t 3, 1936 .....	3,244.81
nber 3, 1936 .....	500.00
nber 21, 1936 .....	71.53
er 7, 1936 .....	1,212.46
nber 6, 1936 .....	457.40
ry 9, 1937 .....	3,626.45

Date	Amount of
May 5, 1937 .....	\$2,
July 6, 1937 .....	
August 6, 1937 .....	6,
September 3, 1937 .....	10,
April 11, 1940 .....	20,
June 5, 1940 .....	
November 8, 1940 .....	
March 18, 1942 .....	1,

On the date of decedent's death there was \$1,138.36 of trust income on hand with tax thereon which had accrued and which had not been distributed to the decedent.

It was stipulated that, depending upon the Court's decision with respect to the deductibility of the amounts includible in gross estate on account thereof will be as follows:

If the Court finds that neither the non-exempt assets nor the life insurance contracts transferred to the trust prior to June 7, 1932, are includible in gross estate, the amount includible in gross estate on account of the trust is \$170,288 (which is more than the amount included on account of the same in the estate tax return).

If the Court finds that the non-insurance contracts transferred to the trust prior to June 7, 1932, are not includible in gross estate but that the life insurance contracts transferred to the trust prior to June 7, 1932, are includible in gross estate, the amount includible in gross estate on account of the trust is \$170,288 (which is more than the amount included on account of the same in the estate tax return).

19,093.10.

Court finds that all of the assets transferred to the trust (including both life insurance assets and insurance contracts) are included in gross estate, the amount includible in the gross estate on account thereof is \$472,044.93.

Amount determined in the notice of deficiency that all of the property transferred by the decedent to the trust created on January 29, 1932, is included in the gross estate of the decedent pursuant to section 811 (c) of the Internal Revenue Code.

Proceedings in the Court of Appeals for the Ninth Circuit the parties stipulated as follows:

This is an estate tax case and it presents the question whether property transferred to a trust should be included in the gross estate of the decedent, pursuant to Section 811 (c), (d) of the Internal Revenue Code.

Tax Court held that the property in question should be included in the decedent's gross estate under Section 811 (c) and based its decision solely on the *Church* case (*Commissioner v. Estate of Church*, 335 U.S. 632). Tax Court's memorandum opinion was filed herein on April 1, 1949. Since that time Section 811 (c) has been amended and the holding of the *Church* case has been affected.

the circumstances it seems appropriate that the decision of the Tax Court be vacated and the cause be remanded to it for further proceedings.

Accordingly it is hereby stipulated that the decision below should be vacated and the cause should be remanded to the Tax Court for further consideration in the light of the mentioned amendments to Section 811 and also subdivisions (d) and (g).

\* \* \*

### Opinion

The issue is whether any of the assets transferred by the decedent, prior to June 7, 1933, in the trust created by him on January 29, 1933, should be included in the decedent's gross estate under section 811 (c) or (d) or (g) of the Internal Revenue Code, as amended by P.L. 378, 81st Congress (1949).

The decedent created a trust to which he transferred income-yielding property and also life insurance policies on his own life. We shall consider first whether the income-yielding property (referred to as the non-insurance assets) should be included in the gross estate under section 811 (c) and then the question of the includibility of the insurance assets under section 811 (g). We shall then discuss the necessity for the treatment of the insurance assets in its separate phases which will be apparent from the discussion to follow.

part by the exact statutory language lies. The question is a narrow one and only to a limited area in the history of specifically, transfers between the dates 1931, and June 7, 1932. We shall make it to review the entire judicial and legislative history of the various Code provisions mentioned.\* Much of the confusion that has in the past concerning the various interpretations of what is now section 811, has no bearing on the controversy other than as a source of additional material. The recent amendment to section 811 in the 1949 Act has done much to clear up the confusion. In any event, it is a field which has been described as so fluid "that the wise man is dogmatic even when that is true." Paul, *State and Gift Taxation* (1942), page 338. The terms of section 7 (b) of P.L. 378, 81st Congress (1949), section 811 (c), as set forth in the Act, is made applicable to the estates of decedents.

We may refer the reader to *Tax Law* (March, 1950, page 309; 58 *Yale Law Journal* 395).

#### L. Gross Estate.

The value of the gross estate of the decedent shall be determined by including the value at the time of death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States——

\* \* \*

Transfers in Contemplation of, or Tak-



decedent dying after February 10, 1933. The  
in these proceedings died in 1944 and his  
therefore, within the purview of the 1949  
tion 7 (b) of that Act further provides  
that:

\* \* \* The provisions of section 81  
(B) of such code shall not, in the  
decedent dying prior to January 1, 1913  
to—

(1) a transfer made prior to March 3, 1931  
or

(2) a transfer made after March 3, 1931  
and prior to June 7, 1932, unless the  
transferred would have been includi  
decedent's gross estate by reason of  
datory language of the joint reso  
March 3, 1931 (46 Stat. 1516).

The "amendatory language of the joint  
tion of March 3, 1931 (46 Stat. 1516)" r  
above reads, in the pertinent part, as foll

---

time made a transfer (except in case  
fide sale for an adequate and full con  
in money or money's worth) by trust  
wise—

\* \* \*

(B) under which he has retained f  
or for any period not ascertainabl  
reference to his death or for any per  
does not in fact end before his deat  
possession or enjoyment of, or the ri  
income from, the property, or (ii)  
either alone or in conjunction with an



including a transfer under which the donor has retained for his life or any period not ending before his death (1) the possession or enjoyment of, or the income from, the property or (2) the right to designate the persons who shall possess or enjoy the property or the income therefrom; \* \* \*

Words were added to section 302 (c) of the Act as follows:

302. The value of the gross estate of a decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

\* \* \*

To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of death or intended to take effect in possession or enjoyment at or after his death, [here was added the amendatory language of the joint resolution of March 3, 1931] except in case of a sale for an adequate and full consideration in money or money's worth. \* \* \*

Question, therefore, is whether or not the donor has retained for his life or any period not ending before his death (1) the possession or enjoyment of, or the income from, the property." This applicable part of the amendatory language

cluded in the gross estate.

The facts in the light of which the pre-  
tory language must be interpreted may  
marily set forth as follows: On January  
the decedent created an irrevocable trust  
(and prior to June 7, 1932) he transferred  
assets. The trust provided that:

\* \* \* The entire net income received  
rived from the trust estate and available  
distribution hereunder shall be by said  
paid monthly or in other convenient  
ments as directed by the Trustor  
Selznick for and during his lifetime  
Myron Selznick, however, reserves the  
direct the Trustee from time to time  
keep and add any and all income whic  
suant to the terms hereof, may be paid  
him to the principal of the corpus of  
estate, by giving written instructions  
to time so demanding.

\* \* \*

Any income accrued or undistributed  
termination of any trust or estate  
shall belong and go to the beneficiaries  
beneficiaries entitled to the next  
estate, in the same proportions as  
principal hereof, \* \* \*

On the date of the decedent's death there  
\$1,138.36 of accrued trust income which the

created, the decedent's estate would be he retained "the possession or enjoyment income from, the property." In the face language the decedent created this trust that he be paid the income "monthly or convenient installments as directed" by could seem that to state the question thus, provide the answer. But the petitioners conclude because the decedent did not receive all income from the trust which accrued during he did not retain "the possession or enjoyment the income from the property." That petitioners contend that the decedent "\* \* \* the right to the income only for a period to end before the end of his life. Therefore the language of section 302 (c), as it January 29, 1932, the transfer was not Petitioners concede that assets transferred to the trust after June 6, 1932, are includible in the decedent's gross estate.

Petitioners seek to derive support for their position from the Committee Reports on the Revenue Act of 1932 and the respondent's regulations. The relevant part of the 1932 Act is set forth in Exhibit 1.<sup>2</sup>

2. The value of the gross estate of the decedent shall be determined by including the value of his death of all property, real or personal, tangible or intangible, wherever situated—

\* \* \*

1932, Cumulative Bulletin 1939-1, Part 2, p. 532, reporting upon the amendment to section 302 (c) of the Act of 1926 (as amended by the Joint Resolution of 1931), read, in part, as follows:

The purpose of this amendment to section 302 (c) of the Revenue Act of 1926 is to amend that section in certain respects. The amendments made in that section by the joint resolution of March 3, 1931, which were adopted to render a transfer under which the decedent retained the income for his life. The joint resolution was designed to avoid the effect of the decision of the Supreme Court holding such a transfer not taxable if irrevocable and not made in contemplation of death. Certain new matters have also been added, which is without retroactive effect.

The changes are:

(1) The insertion of the words "or for any period not ascertainable without reference to his death," is to reach, for example, a transfer where decedent reserved to himself the right to make payments of the income of a trust or annuity he had established, but with the provision

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intended to take effect in possession or enjoyment at or after his death, or of which he had at any time made a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death, for any period which does not in fact end

the trust income from the last semi-annual payment to him and his death should be paid to him or his estate, or where he received the income, not necessarily for the remainder of his life, but for a period in the enjoyment of which the date of his death was a necessary element.

\* \* \*

Petitioners contend that the 1932 Act as it is phrased "or for any period not ascertainable without reference to his death" provides for the creation of a trust with reservation of "semi-annual payments of income, and was new matter and not retroactive. Changes (2) and (3) have been omitted for the sake of brevity) and state that they are each merely a "clarification." Change (1), which is set out above, is new matter, and from this petitioners conclude that Change (1) is new matter and not retroactive. In support of this view, the petitioners cite the administrative interpretation of the law in Regulations 105, sec. 81.18.<sup>3</sup>

18. Transfers with possession or enjoyment.—Except in the case of a bona fide purchase for an adequate and full consideration in money's worth, the gross estate embraces (a) all property transferred by the decedent, whether in trust or otherwise, if he retained the use, possession, right to the income, or other enjoyment of the transferred property at the time the transfer was made—

At any time after 10:30 p.m. eastern

There is opposed to petitioners' view purpose of the Joint Resolution of 1931 language of which determines this issue. In *Heiner*, 281 U.S. 238 (1930), the decedent transferred property in trust, the income was to go to her husband for his life and her for her life. It was held that the property was not includible in the decedent's gross estate. Next year, on March 2, 1931, the Supreme

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a period as to evidence his intention should extend at least for the duration of his life and his death occurs before the end of such period; or

(2) At any time after 5 p.m., eastern standard time, June 6, 1932, and such reservation is for any period mentioned in

(1) or for any period not ascertainable without reference to his death.

A reservation for a "period not ascertainable without reference to his death" may be illustrated by a reservation of the right to receive, in periodic payments, the income of the transferred property where none of the income between the last periodic payment and decedent's death was received by him or his estate; or by a reservation of a life estate following a precedent estate for a term of years.

The use, possession, right to the income and enjoyment of the property will be considered as having been retained by or reserved to the decedent to the extent that during any such period the property may be applied towards the discharge of a legal obligation of the decedent, or otherwise for his benefit.

If such retention or reservation is of a part of the use, possession, income, or other



three per curiam opinions based on  
einer, supra. Those cases differed from  
einer, supra, in that there was no inter-  
estate, i.e., the income was reserved for  
with other disposition at death. This  
case is the same as the present situation  
here we have the payment provision  
the income accrued at grantor's death  
beneficiaries. The point is that it was  
of life income which was before Con-  
n, on the very next day after the three  
decisions were rendered, the Joint Reso-  
March 3, 1931, was enacted. The meaning  
resolution was clear—the reservation of  
will bring the transferred property  
gross estate of the transferor. The peti-  
gument is that the language of the Joint  
of 1931 as it provides for a trust with-  
tained, did not cover the present trust;  
so it took the full force of the language  
2 Act which was not retroactive; that the  
of the 1932 Act as it states “or for any  
ascertainable without reference to his  
the use of words in the statute which, for  
me, reaches this type of trust. In order  
at this argument, petitioners must first  
ew that “reservation of income” requires  
cent of income to go to the decedent-



other than reliance on the confusion and uncertainty that existed in 1931 and 1932 concerning subject sections of the law. We need not know that confusion or share ancient doubt is another day and another atmosphere; the old language must be examined, for the language of the 1931 change that is revived is of the 1949 Act. In this connection, it is important to note that there was some doubt in Congress about the section of the 1949 Act providing for the trusts created between March 3, 1932, and June 7, 1932, was at all necessary.<sup>5</sup> Had

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<sup>5</sup>In the genesis of the 1949 Act, what is section 7 (b) (2) thereof was apparently first brought to light on the floor of the Senate with the following colloquy:

Mr. George: Mr. President, the Senator from Colorado has some amendments to this section, I believe, and the Senator from Pennsylvania left with me an amendment which should now be considered. I will get to the desk and ask that it be stated. I will explain that it is intended to take care of certain cases of transfers after March 3, 1932, prior to June 7, 1932, at which time the Senator by appropriate resolution, undertook to clarify their existing in the future, but did not make that resolution retroactive to March 3, 1932. I doubt whether it is necessary, and I will leave it to the Senator from Pennsylvania, but to make certain, I now offer the amendment. [Emphasis added].

The Presiding Officer: The clerk

been adopted, it would have left trusts during the critical period to be examined only under the new section 811(c) (1) (b). The petitioner tacitly admits would render transfers taxable. It is apparent that in the Congress meant only to give the pre- the benefit of reliance on *May v. Heiner*, to create any new basis for interpretation of the Resolution of 1931 and subsequent law to allay the doubts that might have existed in 1929 as to their interpretation.

The most damaging aspect of the petition is its failure to survive an appraisal of the substance of the transfer itself. All of the

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new paragraph" and insert in lieu thereof two new paragraphs," and at the end of section 811 to add a new paragraph reading as follows:

Exception in the case of transfers after March 3, 1931, and prior to June 7, 1932: Property transferred after March 3, 1931, and prior to June 7, 1932, shall not be included in the gross estate under this subsection by reason of the fact that the decedent retained any rights described in the amendatory language in section 803 (a) of the Revenue Act of 1931 unless such property is includible by reason of the amendatory language of the joint resolution of March 3, 1931 (46 Stat. 1516).

George: Mr. President, I should like to say that both the Senators from Pennsylvania are interested in this amendment. While I think it is precautionary, at the same time many very prominent lawyers in the State of Pennsylvania

until his power to command the payment of the income was ended by his death. He could not have received this income at any time and in any manner except as desired merely by so requesting the trustee. The decedent enjoyed the trust income during his life to the extent that he desired. No other person had any claim upon that income until the decedent's death and it was then determined how much, if any, the decedent had not called upon the trustee to pay over to him. The decedent retained the right to the trust income until the time of his death. The income to which he had a right but which he never received at death he had not reduced to possession with him. It was "retained" by him.

In our opinion, and in the language of the Regulations of 1931, the decedent made a transfer of the property which he "retained for his life \* \* \* to the trust from, the property \* \* \* ." We hold, therefore, that the non-insurance assets transferred by the decedent prior to June 7, 1932, to a trust created for him on January 29, 1932, are includible in his gross estate under section 811 (c) of the Code.

The next question for consideration is whether the proceeds of the insurance policies should be included in the decedent's gross estate. In analyzing the income-yielding property transferred to the trust which we have held above should be included in the gross estate, the decedent transferred the insurance policies to the trust, i.e., he made

the decedent paid the premiums on the  
at least indirectly. Section 811 (g), as  
by the Revenue Act of 1942, and section  
of that Act apply and are set forth in the

# 1. Gross Estate.

Value of the gross estate of the decedent shall  
be determined by including the value at the time of  
death of all property, real or personal, tangible  
or intangible, wherever situated, except real prop-  
erty located outside of the United States—

\* \* \*

## Proceeds of Life Insurance.—

\* \* \*

Receivable by other beneficiaries.—To the extent of the amount receivable by all other bene-  
ficiaries of life insurance under policies upon the life  
of the decedent (A) purchased with premiums,  
for consideration, paid directly or indirectly  
by the decedent, in proportion that the amount so  
received by the decedent bears to the total premiums  
paid for the insurance, or (B) with respect to which  
the decedent possessed at his death any of the inci-  
dental ownership, exercisable either alone or in  
conjunction with any other person. For the pur-  
poses of clause (A) of this paragraph, if the de-  
cedent transferred, by assignment or otherwise, a  
policy of life insurance, the amount paid directly or in-  
directly by the decedent shall be reduced by an  
amount which bears the same ratio to the amount  
received directly or indirectly by the decedent as the  
portion in money or money's worth received  
by the decedent for the transfer bears to the value  
of the policy at the time of the transfer. For the  
purposes of clause (B) of this paragraph, the term  
"incidental ownership" does not include a rever-  
sible interest.

law, the proceeds of the policies allocable to premiums paid by the decedent before January 1, 1941, will be includible in his gross estate under section 811(g) if he possessed any incident of ownership in the policies after that date. The estate tax return preparers have stipulated that the portion of the proceeds allocable to premiums paid after January 1, 1941, is includible. The question remains whether the portion of the proceeds of the policies allocable to premiums paid prior to January 1, 1941, is includible in the gross estate.

The term "incident of ownership" is not defined in the tax law. Its use in the 1942 Act involves a substantial mental change, however, which reveals that the purpose of Congress was to cut "through" the tax avoidance schemes." Paul, *Federal Estate Taxation*, 1946 Supp. Section 10.37. The Committee Reports on the 1942 Act, 1942-2, Cumulative Supplement 491, 677, state that "Incidents of ownership are not confined to those possessed by the decedent

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life insurance) is amended to read as follows:

"(g) Proceeds of Life Insurance.

\* \* \*

(c) Decedents to Which Amendment Applicable.—The amendments made by subsection (b) shall be applicable only to estates of decedents who die after the date of the enactment of this Act, in determining the proportion of the premium paid for other consideration paid directly or indirectly to the decedent (but not the total premiums paid) the amount so paid by the decedent on or before

legal sense." Prior to the 1942 Act, the trusts and the cases generally used the term "beneficial owners of ownership," see Paul, *Federal Income Taxation*, supra.

It contained the following provision:

Trustor reserves the absolute right to cause or cause to be cancelled, and revoke or to be revoked, any of the insurance policies herein referred to, or which may hereafter be added to this Trust, provided that he first obtain the written consent of any two of the Trustees, to wit: The Trustee, David O. Selzer and Loyd Wright; provided further, that any cancellation or any cash surrender value received on any such policies, shall remain in and/or be added to the corpus of this Trust.

The Trustee relies on the following language in Regulations 105, Section 81.27 (as amended by Reg. 101.27-1(b)(2); 1943 Cum. Bul. 1094):

"Beneficial owners of ownership in the policy include, for example, the right of the insured or his estate to its economic benefits, the power to designate the beneficiary to surrender or cancel the policy, to assign it, to revoke an assignment, to pledge it for a loan, or to obtain from the insurer a loan against the surrender value of the policy, etc. The insured possesses an incident of ownership if his death is necessary to terminate his interest in the insurance, as for



to his estate, or payable as he might direct, should the beneficiary predecease him.

The petitioners contend that if the decedent surrendered the policies the proceeds would go to the benefit of the trust, not to the decedent. The respondent contends that this makes no difference, that the power alone to surrender the policies is not sufficient incident of ownership.

The insurance policies were made payable to the trust and the decedent reserved in the policies the power to cancel the insurance policies if he obtained the written consent of any two of the following: The Trustee, David O. Selznick, and Wright. But the decedent reserved the power to revoke the appointment of the last two persons above and to "substitute other persons in their true, as the petitioners contend, that the proceeds of the cancelled policies would not immediately accrue to the decedent. But those proceeds would be invested by the trustee and the income therefrom would go to decedent for his life under the agreement. Further, the decedent reserved in the trust, the right to direct the trustee as to the investment of the trust corpus (a part of which the canceled policies would become) and the income therefrom directed by the decedent need not be "apparently impermissible by law for investment of trust property under the laws of the State of California.

It is apparent that the decedent could have cancelled the policies and the proceeds representing the



insurance to the decedent's benefit, the income from (since he reserved the trust income) would go to the decedent from such part of the proceeds as the decedent chose. The right to receive the income from such insurance is an "incident of ownership" within the meaning of the statute.

In our opinion, the proceeds of the insurance payable to premiums paid prior to January 1, 1942, are includible in the decedent's gross estate under the provisions of section 811 (g) of the Internal Revenue Code, and we so hold.

We held above that the non-insurance assets are includible under section 811 (c) and the insurance proceeds are includible under section 811 (g). In our opinion it is not necessary to consider whether the insurance assets should be included in the gross estate under section 811(c), although it has been held that insurance is not includible exclusively under section 811(g)<sup>7</sup> that is, insurance has been includible if it has been transferred in contemplation of death under section 811(c). This aspect of the problem is not present here and in our opinion, we have no occasion with the mandate as to section 811 (c) and the insurance to discuss our discussion above.

Our holdings are dispositive of all of the issues presented. Material collected in Paul, Federal Estate Taxation, 1946 Supp., section 1039, paragraph 10,390, Committee Report reading: "[Section 811, as amended in 1942] does not constitute the

to consider whether they, or any of them, are includible under section 811 (d) of the Code.  
Decision will be entered under Rule 5.  
Served November 28, 1950.

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The Tax Court of the United States  
Washington

Docket No. 14985

ESTATE OF MYRON SELZNICK, DECEDENT,  
BANK OF AMERICA NATIONAL  
AND SAVINGS ASSOCIATION, DECEASED,  
SELZNICK, and CHARLES H. SELZNICK,  
EXECUTORS,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DECISION PURSUANT TO MANDATE

Pursuant to the mandate of the United States Court of Appeals for the Ninth Circuit, issued November 28, 1949, in which it was ordered and adjudged that the decision of the Tax Court rendered June 3, 1949, be vacated and the cause remanded to the Tax Court for further consideration in light of the amendments of October 25, 1949, to Section 811 (c) and also subdivisions (d) and (e) of the Internal Revenue Code, the case is

Court satisfactory evidence that the tax  
paid and on March 30, 1951, the respond-  
a revised computation of tax. Now, there-

l and Decided: That there is an overpay-  
estate tax in the amount of \$12,108.22,  
ount was paid after the mailing of the  
deficiency.

/s/ ERNEST H. VAN FOSSAN,  
Judge.

April 3, 1951.

April 4, 1951.

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Tax Court and Cause.]

ON FOR REVIEW BY THE COURT  
OF REPORT OF A DIVISION

esiding Judge of the Tax Court  
e United States:

ers respectfully pray that the Presiding  
ercise the discretion conferred on him by  
118(b), I. R. C., and direct that the  
lum Decision entered in the above pro-  
n April 3, 1951, be set aside and that  
e be reviewed by the entire Court.

h petitioners do not accept the decision  
erein on April 3, 1951, and intend to peti-  
ion of that decision, the amount of

reflected in the decision. The facts are as follows (p. 2):

“\*In the event that evidence of payment of State inheritance taxes in the amount of \$63,777.06 is submitted before the expiration of sixty days after the decision of The Tax Court of the United States becomes final, or before the payment in the amount of \$68,337.64 was allowed.”

On March 26, 1951, petitioners filed payment of inheritance taxes in the sum of \$574.84, thereby becoming entitled to the refund of an overassessment in the sum of \$68,337.64 in accordance with respondent's own figures. The decision entered however allows an overassessment of only \$12,108.22, which seems to be plainly erroneous.

We respectfully request that the April 10, 1951 decision be reviewed by the Court for the purpose of correcting the error above referred to.

Respectfully submitted,

/s/ JOSEPH D. BRADY,

/s/ WALTER L. NOSSAM

Attorneys for Petitioners

Dated: April 10, 1951.

Received and Filed T. C. U. S. April 11, 1951.

the United States Court of Appeals  
for the Ninth Circuit  
Tax Court Docket No. 14,985  
Cause.]

## PETITION FOR REVIEW

Honorable Judges of the United States  
of Appeals for the Ninth Circuit:  
Estate of Myron Selznick, Deceased, Bank  
of America National Trust and Savings Association  
and O. Selznick and Charles H. Sachs, Ex-  
ecutors, Joseph D. Brady and Walter L. Nos-  
ter, their attorneys, respectfully petition the  
Court as follows:

### I.

#### Nature of Controversy

Plaintiffs are executors of the Estate of Myron  
Selznick who died a resident of Beverly Hills, Cali-  
fornia, March 23, 1944.

On January 29, 1932, decedent Selznick executed  
and recorded a Declaration of Trust in which Citi-  
zens National Trust and Savings Bank of Los An-  
geles was trustee.

On January 29, 1932, decedent transferred to the  
trust (other than life insurance contracts)  
of approximately value on the date of his death of \$152,-  
000. Decedent also transferred to the trust nine  
life insurance contracts owned by him. The portion

miums paid prior to January 10, 1941, v  
805.10.

Respondent in his 90-day letter determining these transfers by decedent, were includible in decedent's gross estate for Federal estate tax purposes. The transfers "intended to take effect in possession or enjoyment at decedent's death" coming "within the provisions of section 811 (c) of the Internal Revenue Code."

Petitioners have denied that the transfers were intended to take effect in possession or enjoyment at decedent's death because all decedent's income or other possession or enjoyment of trust assets ended, under the terms of the trust, prior to the date of decedent's death, and therefore the transfers were not includible in decedent's gross estate under section 302 (c) of the Revenue Act of 1938, as amended by the Joint Resolution of March 3, 1941 (Public Number 131, 71st Congress), which was the law applicable to these transfers, under section 811 (c), I.R.C.

Petitioners have also contended that the transfers are not includible in gross estate under any provision of the Internal Revenue Code.

The Tax Court, by order and decision dated June 7, 1949, upheld the determination of respondent that the transfers were includible in decedent's gross estate. In doing so it relied upon the decision of the Supreme Court in *United States in Commissioner v. Estate of*

...ing only at the moment of his death,  
in this case, under the trust, the decedent's  
income ended before his death.

...ers duly petitioned the United States Cir-  
...t of Appeals for the Ninth Circuit to  
...e Tax Court's decision. After the record  
...sent to the Court of Appeals, petitioners  
...ndent entered into a stipulation for re-  
...he case to the Tax Court for further con-  
...in view of legislation enacted by Congress  
...case was pending. Section 7 (b) of P.L.  
...Congress (1949), amends section 811 (c)  
...de and makes it applicable to estates of  
...dying after February 10, 1939. Section  
...ne 1949 Act further provides that property  
...d after March 3, 1931, and prior to June  
...hall not be included in the gross estate  
...would have been includible by reason of  
...latory language of the Joint Resolution of  
...1931 (46 Stat. 1516). This Court remanded  
...to the Tax Court pursuant to the stipula-  
...e parties.

...hearing of the cause pursuant to remand,  
...ourt by decision entered April 3, 1951, ad-  
...its former decision. A timely motion by  
...s for review by the Tax Court of the  
...the division rendering the decision was  
...May 7, 1951.

...x Court erred:

...holding and deciding that transfers by de-



(with respect to assets other than life contracts) and of \$148,805.10 (with respect to insurance contracts) were includible in decedent's gross estate for Federal estate tax purposes.

2. In holding and deciding that there was a deficiency in Federal estate tax based on the said transfers or either thereof in the gross estate.

3. In rendering a decision which, in the premises above enumerated, is contrary to the controlling law and regulations and is not supported by the evidence in the case.

4. In holding that there was an overpayment of the tax in the sum of only \$12,108.22 instead of the greater sum as would result from not including in the taxable estate the items mentioned in paragraph 1, above.

## II.

Declaration of Court in Which Review Is Sought

Petitioners hereby declare that they seek review of the decision of the Tax Court of the United States by the United States Court of Appeals for the Ninth Circuit.

## III.

Allegations to Establish Venue and Jurisdiction

Myron Selznick, the decedent herein, died in 1944 at Beverly Hills, California, on March 1, 1944. His estate is being administered in Los Angeles County, California. The petitioners

national banking association; David O. and Charles H. Sachs, are the duly appointed and acting executors of the last will and testament of Myron Selznick. This case involves the federal estate tax liability of petitioners as to their share of said estate.

That the United States Court of Appeals for the Ninth Circuit is established by the fact that petitioners' estate tax return (Form 706) was filed with the Collector of Internal Revenue for the District of California, located at Los Angeles, and the collection district is within the jurisdiction of the Court of Appeals for the Ninth Circuit, and by the fact that the parties hereto have stipulated that the decision by the Tax Court is to be reviewed by any Court of Appeals other than the one herein designated.

The petition is for a review of the decision by the Tax Court holding that transfers to the trust made by the decedent on January 29, 1932, in the total amount of \$152,951.83 and \$148,805.10, respectively, were included in his gross estate, and is filed under the provisions of sections 1141 and 1142 of the Internal Revenue Code.

Wherefore, petitioners pray that the decision of the Tax Court of the United States be reviewed by the United States Court of Appeals for the Ninth Circuit, and that a transcript of the record be prepared and transmitted to the Clerk of the Court for

reviewed and corrected.

Dated: May 21, 1951.

/s/ JOSEPH D. BRADY,

/s/ WALTER L. NOSSAM

Attorneys for Petiti

State of California,

County of Los Angeles—ss.

W. W. Seward, being first duly sworn, he is an Assistant Trust Officer of Bank of National Trust and Savings Association, a banking association, which is one of the pointed and acting Executors (with Davi nick and Charles H. Sachs), of the Estate Selznick, deceased, petitioners on review that affiant is duly authorized to verify the ing petition for review; that affiant has foregoing petition for review, is familiar statements contained therein and that stated are true except as to those facts stated upon information and belief and those believes to be true.

/s/ W. W. SEWARD.

Subscribed and sworn to before me,  
day of May, 1951.

[Seal] /s/ C. H. MICHEL,

Notary Public in and for the County of  
geles, State of California.

Cause.]

## NOTICE

s Oliphant, Chief Counsel for the Bureau  
ternal Revenue, and to Theron L. Caudle,  
ant Attorney General.

Take Notice that the above-named peti-  
ave filed with the Clerk of the Tax  
the United States their Petition for Re-  
e decision of the Tax Court in the above-  
ause, a copy of which petition is herewith  
on you.

May 25, 1951.

JOSEPH D. BRADY, and  
WALTER L. NOSSAMAN

By /s/ WALTER L. NOSSAMAN.

of Copy Acknowledged.

C.U.S. May 25, 1951.

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Tax Court and Cause.]

## PETITIONERS' DESIGNATION OF POINTS OF RECORD ON REVIEW

rk of the Tax Court of the United States:  
ve-designated petitioners, being also the  
s on Review, hereby designate for inclu-

ceedings on April 3, 1951, the entire follows:

1. The documents and records specified in the Petitioners' Designation of Contents of Record for Review, filed in this Court on or about July 1, 1949, and heretofore transmitted to the United States Court of Appeals for the Ninth Circuit.

2. The original exhibits included in the Record on Consideration of Original Exhibits made by the United States Court of Appeals for the Ninth Circuit on or about August 2, 1949.

3. Stipulation dated December 23, 1949, between the above-named Petitioners and the Commissioner of Internal Revenue, stipulating that the decision made by the Tax Court on April 1, 1949, be affirmed and the cause remanded to the Tax Court for further consideration. (Not of Record. See Mandate.)

4. Order of the United States Court of Appeals for the Ninth Circuit remanding the cause to the Tax Court. (Not of Record. See Mandate.)

5. Decision of the Tax Court promulgated on November 28, 1950.

6. The Tax Court's decision pursuant to the remand, entered April 3, 1951.

7. Petitioners' Motion for Review by the United States Court of Appeals for the Ninth Circuit, Report of a Division, and Order of Mandate denying said Motion.

on for Review by the United States  
appeals.

ce of Filing Petition for Review, together  
f of Service thereof and of service of a  
e Petition for Review.

tement of Points on which Petitioners  
Rely on Review.

s Designation of Contents of Record on  
tificate and Seal.

is hereby made that a transcript of said  
so far as it was not prepared, certified  
mitted in connection with the Petition for  
retofore filed in this cause) be prepared,  
nd transmitted by the Clerk of the Tax  
the United States to the Clerk of the  
tes Court of Appeals for the Ninth Cir-  
quired by law and the rules of said Court  
.

May 28, 1951.

/s/ JOSEPH D. BRADY,

/s/ WALTER L. NOSSAMAN,

Counsel for Petitioners.

and Filed T.C.U.S. May 31, 1951.

## CERTIFICATE

I, Victor S. Mersch, Clerk of the Tax the United States, do hereby certify that going documents, 1 to 24 inclusive, consist are all of the original papers and proceedings file in my office as called for by the "Decisions as to Contents of Record on Review" in the proceeding before the Tax Court of the United States, entitled "Estate of Myron Selznick, Deceased, et al., Petitioners, v. Commissioner of Internal Revenue, Respondent," Docket Number 14985 and the petitioner in the Tax Court proceeding initiated an appeal as above numbered and together with a true copy of the docket of the said Tax Court proceeding, as the same appears in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 11th day of June, 1951.

[Seal]      /s/ VICTOR S. MERSCH,  
Clerk, The Tax Court of the  
United States.



U.S. No. 12580. United States Court of  
for the Ninth Circuit. Estate of Myron  
Deceased, Bank of America National  
Savings Association, David O. Selznick  
es H. Sachs, Executors, Petitioners, vs.  
ner of Internal Revenue, Respondent.  
of the Record. Petition to Review a  
The Tax Court of the United States.

June 16, 1951.

/s/ PAUL P. O'BRIEN,  
The United States Court of Appeals for  
Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

Estate of MYRON SELZNICK, Deceased  
of AMERICA NATIONAL TRUST  
INGS ASSOCIATION, DAVID  
NICK and CHARLES H. SACHS,  
Petitioners on Re

vs.

COMMISSIONER of INTERNAL REVENUE  
Respondent on Re

STATEMENT OF POINTS ON WHICH  
TIONERS INTEND TO RELY ON RE

Petitioners hereby designate the following  
the points upon which they intend to rely on  
review of the above proceeding by the United  
Court of Appeals for the Ninth Circuit:

1. The Tax Court of the United States  
deciding that transfers of decedent to  
created on January 29, 1932, totaling \$  
were includible in the decedent's gross  
federal estate tax purposes.

2. The decedent did not retain for his  
any period not ending before his death, the  
sion or enjoyment of, or the income from  
property thus included in decedent's gross  
by The Tax Court

ate the persons who shall possess or enjoy  
erty thus included in decedent's gross  
The Tax Court, or the income therefrom.

h respect to none of the property included  
nt's gross estate by The Tax Court was  
ment thereof as of the date of decedent's  
ject to any change through the exercise of  
either by the decedent alone, or in con-  
with any person, to alter, amend or revoke.

h respect to life insurance contracts which  
art of the property included in the dece-  
ss estate by The Tax Court, at no time  
uary 10, 1941, did the decedent possess  
ent of ownership therein.

Tax Court erred in holding and deciding  
e was any deficiency in Federal estate tax  
including in gross estate said transfers by  
of property to said trust.

Tax Court erred in rendering a decision  
the respects above-enumerated, is contrary  
ntrolling law and regulations, and is not  
by the evidence in the case.

May 28, 1951.

/s/ JOSEPH D. BRADY,  
/s/ WALTER L. NOSSAMAN,

Counsel for Petitioners on  
Review.

